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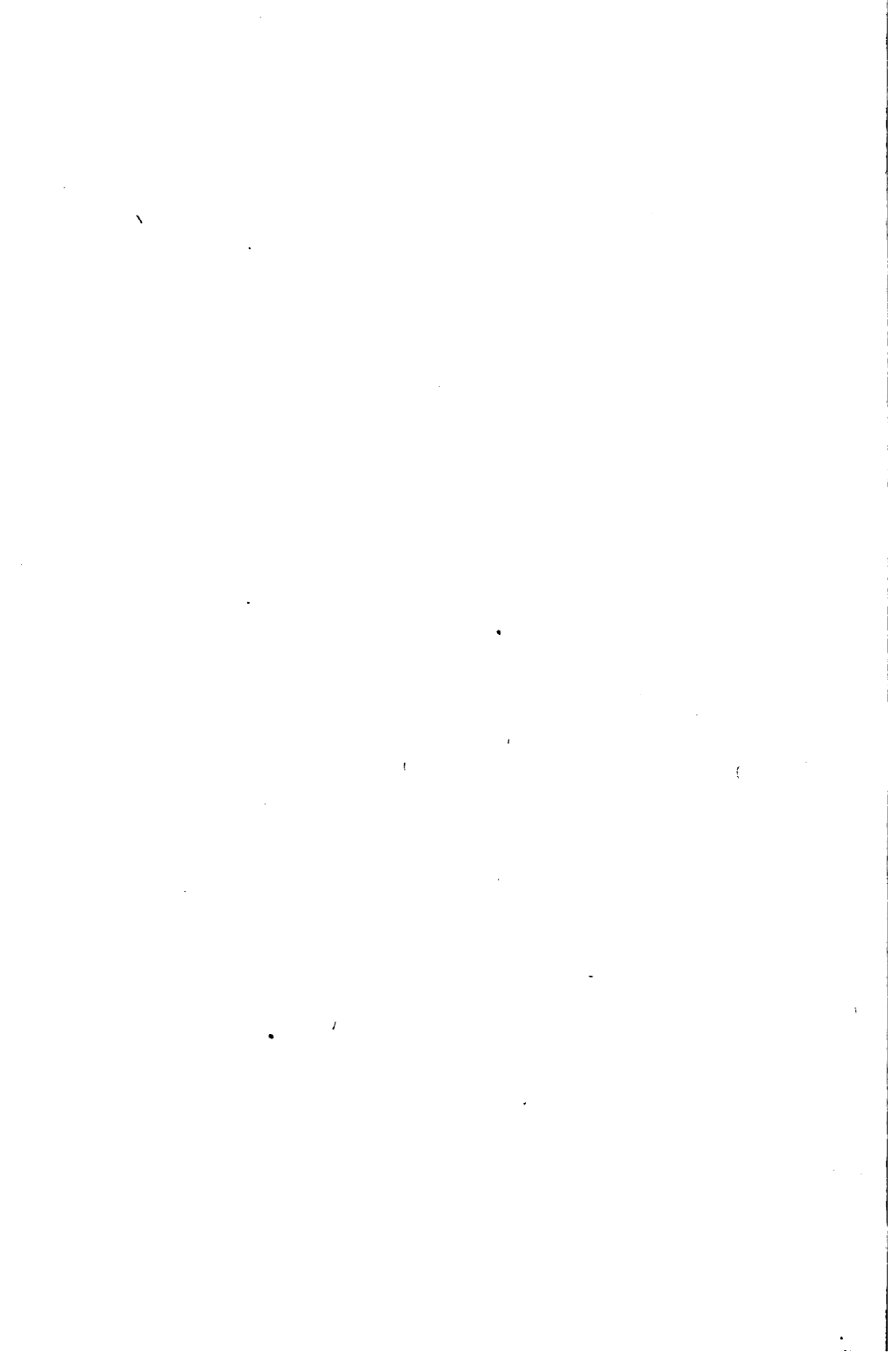
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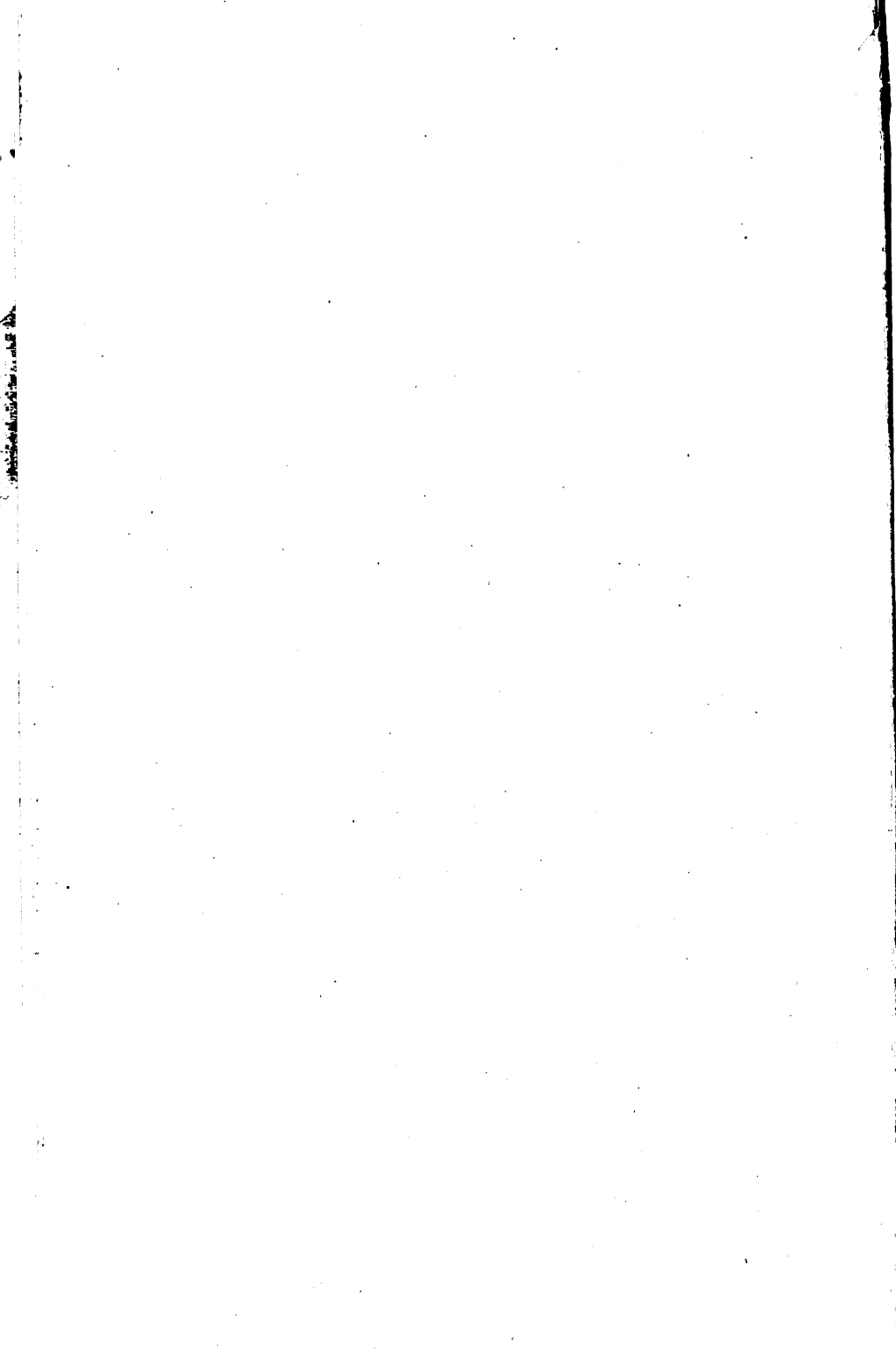
REPORT

OF THE

Penitentiary
Joint Committee

OF

ARKANSAS



Penitentiary
Committee Report

1901

CR 1 B

Arkansas General Assembly

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THE FOLLOWING IS THE REPORT OF PART OF
THE JOINT COMMITTEE ON PENITENTIARY:

Mr. Speaker:—We, your Joint Committee on Penitentiary, heretofore directed by concurrent resolution to investigate the management of the affairs of the Arkansas State Penitentiary, beg leave to report:

1. That we have discharged that duty in so far as our other duties and circumstances would permit and herewith report the testimony taken in said investigation, together with such conclusions as your Committee have reached therefrom.

2. That in our opinion the provisions of the statute relating to the management of the affairs of the Penitentiary have not been properly regarded.

3. That the law requires contracts to be executed by the Superintendent and Financial Agent subject to the approval of the Board of Penitentiary Commissioners, but that the reverse rule has been adopted and has prevailed for the last two years, if not longer.

4. That the Superintendent and Financial Agent are required by statute to file their biennial report by the 1st of November preceding the sitting of the General Assembly, but for some years past these officers have failed to file

their reports until the 1st of January preceding the sitting of the Legislature.

5. That the Superintendent and Financial Agent are required by statute to file monthly reports with the Auditor, but that at the time your committee began its investigation they were some ten or eleven months behind in the discharge of that duty.

6. We find that the Superintendent and Financial Agent by and with the approval of the Board executed a contract for the supply of wood by the Penitentiary with Hall C. McConnell, a minor, and the son of Superintendent E. T. McConnell.

7. We find that Superintendent and Financial Agent in compliance with the orders of the Board executed a contract with W. A. Bright for the hire of convicts to be worked upon a railroad in Washington County without first demanding that a bond be executed or some other kind of indemnity be given whereby the State might secure payment of the indebtedness which might accrue to her under the terms and provisions of said contract.

8. We find that the Superintendent did not promptly discharge and the Board did not demand the prompt discharge of E. A. Kline, a Warden in charge of a convict camp, when it had been conclusively established before said Board that the said E. A. Kline had been guilty of disposing of cotton seed belonging to the State, of the value of about \$1,800.00, and appropriating the proceeds to his own use.

9. We find that Frank Hill, Commissioner of Mines, Manufacture and Agriculture, and a member of the Board, took up bed and board at the Penitentiary and that the Superintendent invited and permitted the same.

10. We find that the Board purchased a site for the new Penitentiary at a large price, without first ascertaining or inquiring as to the market or prevailing price of real estate in the vicinity of said site.

11. We find that the Superintendent permitted convicts to be hired out as domestic servants, in five instances, in violation of section 5559 of Sandels & Hill's Digest.

12. We find that the Superintendent and Financial Agent, in compliance with the orders of the Board, executed a contract with the Arkansas Brick and Manufacturing Company for the supply of material to be used in the construction of the new Penitentiary walls and buildings, without first advertising for competitive bids, or ascertaining the price or cost of such material, or the customary rules of wall measurement in use in this locality.

13. We find that the universal custom has been to hire convicts out at fifty cents per day, the State maintaining, clothing and guarding the same.

14. We find that the Board has made contracts for the hire of convicts for periods of time extending beyond their terms of office, and in one instance for a period of ten years.

15. We find that the Superintendent, E. T. McConnell, offered to remunerate S. P. Turner, Purchasing Agent

for the State Charitable Institutions, if he (Turner) would award to him (McConnell) the contract to supply the State Charitable Institutions with coal for the season of 1898 and 1899, but that this was not in the discharge of his official duty.

16. In our opinion there are other affairs of less consequence pertaining to the management that have not been conducted in that business-like manner that should obtain, among which we mention that horses belonging to outside parties and State officers have been kept and cared for at the expense of the State.

17. We also find that the Financial Agent is unable by referring to his books, to ascertain the exact date in February, 1900, on which he sold the cotton crop of 1899, amounting to over \$53,000.00.

HARRY L. PATTON,

Chairman Joint Committee,

GEO. W. WILLIAMS,

SAM W. SIMPSON,

JAS. W. ELLIS,

Members of House Committee.

We concur in the report filed by the Chairman of Joint Committee, except as to the matter of the proposition to sell coal to S. P. Turner, Secretary of the Board of State Charities. Upon this the committee are not agreed,

hence we submit for your consideration and judgment the testimony taken in reference thereto.

Respectfully submitted,

R. A. DOWDY,

T. E. MEARS,

J. B. HARRIS,

R. T. POWELL.

I do not agree to the eighth finding of fact. In the matter of shortage of E. A. Kline it appears from the testimony that the Superintendent was not notified of the meeting of the Board to investigate said charges and that said investigation was conducted by the Financial Agent whose duty it was to look after the matter, with the assistance of the Board. Governor Jones himself testified that the Board did not mention the affair to McConnell, either directly or indirectly. However, afterwards unofficial information did reach the Superintendent of the character of the charges against Kline, and he was thereafter discharged by the Superintendent, and the camp of which he had charge, abolished.

I do not agree to the fifteenth finding. In the first place Mr. McConnell was not acting in the capacity of Superintendent of the Penitentiary, but was representing a coal mine located in Johnson County. Mr. Turner himself did not consider that the proposition was an improper one.

Q. (asked Turner). At the time that proposition was talked over between you and Mr. McConnell, did you consider what he said to you a business proposition, or did you consider it an improper proposal to divide profits on the deal?

A. My view of it at that time was that it was an intention on Mr. McConnell's part to save the State money, because I know he went to the trouble of getting up data, at least he told me, and the proposition, as I understood it on his part, was to furnish the Institutions coal for less money than I could get is elsewhere.

Q. Then you did not consider it improper at that time—a dishonest one?

A. No, sir. I did not think anything serious of it at all.

So in the first place, I do not think the matter comes within the scope of this investigation, not being connected with the Penitentiary management, and in the second place if Turner had accepted the proposition he would have saved the State sixty-five cents per ton on coal, less the cost of hauling from the car to the Institutions.

In the matter of hiring convicts in certain instances as domestic servants in private families, it appears from the testimony that the precedent had been established before the term of the present Superintendent began, and that on one occasion he—the Superintendent—called in some of these convicts and that the Board of Penitentiary

Commissioners ordered him to permit them to return to the parties having a contract for their services.

I agree to the findings not herein specifically dissented from.

R. L. LAWRENCE.

Mr. Speaker: As members of the Joint Committee on Penitentiary the undersigned beg leave to report:

That we concur in the report filed by the Chairman of the Joint Committee, except as to the matter of the proposition to buy coal from S. P. Turner, Secretary of the Board of State Charities. Upon this the testimony is not satisfactory and the Committee is not agreed. Hence we submit for your consideration and judgment the testimony taken in reference thereto.

R. A. DOWDY,
T. E. MEARS,
J. B. HARRIS,
R. T. POWELL.

TESTIMONY.

E. T. McCONNELL, first witness called, being sworn, testified as follows:

(BY MR. PATTEN.)

Q. State your name and official position.

A. E. T. McConnell, Superintendent of the Arkansas State Penitentiary.

Q. Can you furnish your biennial report at this time?

A. I can not.

Q. Why?

A. On account of the delay of the Penitentiary Board in appointing appraisers. Mr. Baker (of Madison County) after he was appointed, received a telegram calling him home, which further delayed the work.

Q. When did they first appoint appraisers?

A. I do not know what date it was.

Q. Was it before November 1st?

A. No, sir. I do not think it was before January; somewhere about the 10th of January.

Q. Do you think it was before the 1st of November?

A. No, sir. I do not think it was before the 1st of January.

Q. What time do you think the law requires you to file your report?

A. It requires the report to be filed October 30th, but I was acting under the instructions of the Board, who for the last six years had had it filed up to the 1st of January in order to embrace the accounts of the whole year.

Q. You put these reports in the hands of the printer?

A. Yes, sir. The statistics and the part relating to the number of convicts, where they are located, the deaths of convicts, the number of escapes, etc. But the financial part is not in the hands of the printer because the appraisers appointed have not yet made an inventory of the various articles belonging to the State at the different camps.

Q. Can you tell when the financial reports will be in the hands of the printer?

A. I think the first of this week. But if it had have been in the hands of the printer six weeks ago it could not have been obtained any earlier because they print everything else first; that is, the Secretary of State, Auditor's and other reports, which are printed first and this report put off until the last thing.

GOVERNOR JONES, second witness called, being duly sworn, testifies as follows:

(BY MR. PATTON.)

Q. State your name and official position?

A. Daniel W. Jones. I was Governor of the State of Arkansas for the past two years.

Q. Were you not ex-officio member of the Board of the Penitentiary Committee?

A. The statute makes the Governor a member of the Penitentiary Board, but he is not a presiding officer of the Board.

Q. Do you understand the time required by a statute for the filing of the biennial reports of the Superintendent of the Penitentiary?

A. The statutes will show the time; my recollection is 'tis the first of November preceding the meeting of the Legislature.

Q. Do you know why this report was not filed at that time?

A. Only from information. I have no positive knowledge of the reasons. I will state in this connection that as I now remember, this report was filed about the first of January preceding the Legislature two years ago, but of this I am not positively certain.

Q. What was the information as to the reason that the report was not filed?

A. I have heard that Mr. Moore, the clerk of the Penitentiary, was either sick himself, or there was sickness in his family, which prevented him making out the report at the proper time. He keeps the records of the Penitentiary, but I do not know anything about it from my own knowledge.

Q. Is that the extent of your information?

A. Yes. There should be no difficulty in making this report because there is a perfect record of all the transac-

tions kept, and the report must correspond with these records.

Q. Then the delay was not caused by authority of the Board?

A. Not at any time that I was present at a meeting of the Board. During the month of November, from about the 7th to the 17th or 18th, I was out of the State and on several occasions I was not present at the Penitentiary meetings.

Q. But this was after the time required by law for the report to be filed?

A. My absence in November and December was, of course, but I was sometimes absent during the month of October.

Q. Do you know about the time the appraisers were appointed?

A. Sometime in the latter part of December. I do not remember exactly when. Mr. Vincenheller and Mr. Corey were appointed. Some days after, probably a week or more, I do not remember exactly how long it was, Secretary of State received a letter from Mr. Vincenheller saying that he could not act, then the Board appointed Judge Baker, of Madison County, in the place of Mr. Vincenheller. A few days after this I was taken sick and confined to my room for a week and do not know whether the appraisalment has been made or not.

Q. Governor, did the Board keep a record of their meetings?

A. Yes, sir. It is kept by the Secretary of State.

Q. Governor, prior to the first of November did you ever hear it suggested at a Board meeting that appraisers should be appointed before that date?

A. I have no recollection of the matter. I distinctly remember, however, that these appraisers were not appointed until December preceding the meeting of the Legislature two years ago. I will say to the committee that I had gotten an idea somehow or other that this report was not to be made until the first of January. I know that it was not made previous to that time two years ago. This impression was not corrected until my examination of the statutes today.

MR. ALEX C. HULL, third witness called, being duly sworn, testifies as follows:

Q. State your name and official position.

A. My name is Alex C. Hull, Ex-Secretary of State.

Q. Mr. Hull, as ex-officio member of the Penitentiary Board, what position did you hold?

A. I was Secretary of that Board.

Q. Mr. Hull, do you understand at what time the statute requires the biennial report of the Superintendent of the State Penitentiary has to be filed?

A. My recollection is that the statute says November 1st before the meeting of the Legislature.

Q. Do you know why this report has not been filed?

A. No, sir. It has been the rule since I have been in office to complete the report up to the last of December.

Q. Was this delay caused by any special authority of the Penitentiary Board?

A. I do not think that the Board made any directions as to when it was to be made.

Q. Did you keep a record of the proceedings of the meetings?

A. Yes.

Q. Did the Board ever make an order postponing the making of the report?

A. I think there was no order like that made.

Q. Did Mr. McConnell ever call your attention to the fact that the Board ought to make a report?

A. I do not think that he did.

Q. Have you known all the time the law requiring these reports to be filed at this time?

A. If I knew it I had forgotten it.

Q. Do you mean to say that you do not know of any such request being made by any member of the Board?

A. I know of no such request, but by the common consent of the Board it was to be made as it was two years ago.

Q. How was this common consent made known?

A. I cannot say, except I think that it was taken for granted.

Q. Did you as a member of that Board ever make a request that the report be made according to law?

A. No.

Q. Did Mr. McConnell ever remind the Board that the appraisers should be appointed so that he could make his report by the 1st of January?

A. Not that I know of.

Mr. FRANK H. HILL, fourth witness called, after being sworn, testified as follows:

(BY MR. PATTEN.)

Q. State your name and official position.

A. My name is Frank H. Hill, Commissioner of Mines, Manufacture and Agriculture of the State of Arkansas.

Q. As Commissioner of Agriculture were you not a member of the Board of Penitentiary Commissioners?

A. Yes, sir.

Q. Do you understand what the law is as to the time requiring the Superintendent as to filing his biennial report?

A. Yes, I think I do.

Q. When do you understand the time to be?

A. The time as mentioned in the statutes is on the 1st of November preceding the meeting of the Legislature.

Q. Do you know why that report was not filed?

A. Because it had been the custom to make it up the 1st of January.

Q. Was that the sole reason as you understand it for the cause of the delay?

A. That was the reason for making the report up to the 1st of January.

Q. Do you know of any other reason it was delayed up until the 1st of January?

A. No.

Q. Then that delay was not caused through any expressed directions of the Penitentiary Board?

A. There was no order made to that effect by the Board.

(MR. W.)

Q. Was there any request to that effect made by the Board?

A. Not by the Board as a Board.

Q. Was there any such request made by the members of the Board or any portion of the Board?

A. I know of no request.

MR. HULL recalled

Q. Mr. Hull, you have been before this Board before and as you testified before you have been Secretary of the Board of Penitentiary?

A. Yes, sir.

Q. I will ask you if you keep a record of each meeting of the Board?

A. Yes, sir.

Q. Do you remember the nature of the contract of the Board with Mr. Hall C. McConnell as wood agent for the Penitentiary for 1898?

A. I think it was of the Board appointing or electing Mr. Hall C. McConnell as wood agent for the Penitentiary.

Q. Do you identify this as the minute book of the proceedings?

A. Yes, sir.

Q. Can you turn to the record of that transaction?

A. I do not know that I can. I do not remember well enough about it. As I said, sometimes and in some instances where the Superintendent desires to make appointments under him, he does so. I don't know whether it is on the records or not without investigating the records.

Q. To refresh your memory I will ask you to turn to page 127.

A. I find it.

Q. What does the record there show in regard to this?

A. On motion Mr. Hall C. McConnell was elected wood agent to fill the place made vacant by the resignation of John F. Calif. Motion carried.

Q. What members of the Board were present at these meetings?

A. All the members were present. That is, all the members as such employers.

Q. Do you know what was to be his compensation?

A. No, sir. I do not.

Q. Was he hired at a stipulated salary?

A. Well, I will have to answer that question by saying that the contract was made by the Superintendent and Agent.

Q. Does the Superintendent have the authority to employ persons in such capacity?

A. It seems that he has. I don't know what the law says about that.

Q. Who has authority to make contracts?

A. As I have always understood it, the Superintendent and Penitentiary Agent make the contract.

Q. Then if the contract was made it was confirmed by the Board?

A. Yes. As was stated by the minutes there seems to have been a slip, but this contract was inserted in the minutes.

CONTRACT.

This agreement, made and entered into this the 21st day of January, 1898, by and between J. C. Massey, Financial Agent, and E. T. McConnell, Superintendent of the Arkansas State Penitentiary, parties of the first part, and Hall C. McConnell, party of the second part, Witnesseth:

The parties of the first part hereby agree to deliver on the order of the party of the second part, wood, sawed of merchantable dimensions, at any point within the corporate limits of the city of Little Rock, at the following prices, to-wit: Split or block wood at three dollars and fifty cents (\$3.50) per cord; four foot wood, at two dollars and seventy-five cents (\$2.75) per cord, and odds and ends at two dollars (\$2.00) per cord, payment for same to be made on the last day of each succeeding month for the previous month's purchases. The above prices to hold good until reduction or cut is made by other dealers in this city, when the parties of the first part hereby agree to make pro rata reduction to the party of the second part;

this reduction to be at the discretion of the parties of the first part.

It is further understood and agreed that the party of the second part is to give all his time and attention to increasing the sale of wood, and not to be connected with other business to the detriment of the interest of the parties of the first part; but this is in no way to be construed that the party of the second part is to sell indiscriminately, and thereby entail loss, but to use his discretion and diligence to promote sales to the mutual advantage of both parties to this agreement.

Party of the second part to be liable for wood delivered on his order. This agreement to hold good so long as agreeable to both parties. The parties of the second part to execute a bond in the sum of one thousand dollars (\$1000.00) for the payment of all wood delivered.

Approved by order of Board.

CLAY SLOAN, Auditor,

DAN W. JONES, Governor,

E. B. KINSWORTHY,

Attorney General.

J. C. MASSEY,

E. T. McCONNELL,

H. C. McCONNELL.

BOND.

KNOW ALL MEN BY THESE PRESENTS:

That we, Hall C. McConnell, as principal, and E. T. McConnell, J. C. Moore, Jr., and Thos. E. Little, assureties, acknowledge ourselves to owe and to be indebted to the State of Arkansas in the sum of one thousand dollars (\$1000.00) for the payment of which we bind ourselves, our heirs, executors and administrators firmly by these presents.

The conditions of the above obligations are such that whereas the above bounden Hall C. McConnell, has this day contracted with J. C. Massey, Financial Agent, and E. T. McConnell, Superintendent of the Arkansas State

Penitentiary, for the purchase of wood for a term beginning on this date and ending at such time as is mutually agreed.

Now, therefore, if the said Hall C. McConnell shall faithfully perform all the conditions of the said contract, then this obligation to be null and void, otherwise to be and remain in full force and effect.

Approved by order of Board.

CLAY SLOAN, Auditor and President,

H. C. McCONNELL,

E. T. McCONNELL,

JOE C. MOORE,

THOMAS E. LITTLE.

Q. Who is E. T. McConnell?

A. He is the Superintendent.

Q. Who is Moore?

A. He is clerk of the Penitentiary.

Q. When this is a contract between parties, why do you say in the minutes that he was elected wood agent?

A. Well, just a manner I had of expressing it. We usually voted on all contracts that came before the Board.

Q. Do you usually specify parties to contracts as agents in your minutes?

A. No, we do not.

Q. According to the provisions of this contract, was he not more the agent of the Penitentiary than a man with whom you had contracted to tend land or make a crop?

A. I think not.

Q. Could you show me in your minutes anywhere where you have designated a planter as an agent?

A. No, I don't know that I could show it.

Q. Then you could not give any particular reason why you should designate this contractor as an agent?

A. Nothing further than it seems that he had to have a name out there; that is all that I know, and they gave him the title.

Q. How long did this contract remain in force?

A. I don't remember, Mr. Patton; until the wood was sold.

Q. Are you sure that the wood was sold when the contract was terminated?

A. Oh, I don't know as to the wood on hand when the contract was made.

Q. Do you know that you had wood on hand at the termination of this contract?

A. I don't know that we had any more than was necessary for the use of the Penitentiary; we always had wood out there for use of the Penitentiary. Really I don't know when the contract ceased.

Q. Don't you know that you had wood for sale at that time?

A. No, I do not know it. We evidently sold wood for a good while. I don't know how long.

Q. Do you know that you did not have wood for sale?

A. No, I do not know that.

Q. Then you don't know that that was the cause for the termination of the contract?

A. No, I don't know that they terminated altogether, but that the contract terminated I know, and we quit selling wood about the same time.

Q. Then you don't know the reason for the termination of this contract?

A. No, sir. Nothing more than I have stated.

Q. Do you know Mr. Hall McConnell?

A. Yes, sir.

Q. What relation is he to the Superintendent?

A. He is a son of the Superintendent.

Q. How long did you know him?

A. Well, I think possibly I got acquainted with him about the time the contract was made.

Q. Did he ever speak to you about the contract before it was made?

A. No, not that I have any recollection of.

Q. Did he ever appear before the Board?

A. I don't have any recollection of seeing him before the Board.

Q. Who did appear before the Board in soliciting this contract?

A. Mr. E. T. McConnell.

Q. Do you know the age or about the age of Mr. Hall McConnell?

A. No, I don't. He is a young fellow, eighteen or nineteen, maybe twenty-one, when the contract was made.

Q. Did you ever have your attention called to the fact by any one that Mr. McConnell was a minor?

A. I don't remember that I did.

Q. Then you do not know it to be a fact that the contract was null because he was a minor?

A. No, I did not. I don't know his age.

Q. Do you know whether or not he attended to this contract in person?

A. I think that he did; that was my understanding. I have seen him there frequently.

Q. After the termination of this contract with Hal McConnell, how did the State dispose of the wood she had on hand?

A. It has been my understanding that the State had no wood on hand to dispose of.

Q. Had you ever, prior to this, made similar contracts with any one in regard to wood?

A. Our Board had not, but the Board before us had a contract with Mr. J. F. Caley to dispose of the wood.

Q. Are you familiar with the price of wood here at or about that time.

A. Yes, I think so.

Q. Would it not have been advisable for the State to have sold her own wood instead of some one else's?

A. We did not think so at that time.

Q. Has the State ever done so since?

A. I have no knowledge of it.

Q. According to the provisions of this contract I believe you agreed to deliver the wood to any point within the limits of the city?

A. Yes sir.

Q. Could not, then, the State employ a man to sell this wood and thus have made the profits that otherwise would have gone to the contractor?

A. It might have been so after deducting the cost of selling and collecting. I don't know how much that would have been.

Q. As you have said before you had a great deal of wood on hand at about this time and sold large quantities of it?

A. Yes sir,

(BY SENATOR BUCKNER.)

Q. Mr. Hull, are you a lawyer by profession?

A. No sir.

Q. Mr. Hull, do you know whether a contract with a minor is void or only voidable?

A. Not being a lawyer that is a distinction I don't care to pass on.

Q. Mr. Hull, if a minor makes a contract and a bond be given for its complete and specific performance by bondsmen who are of age, and who are good and valid bondsmen, could not the performance of that contract be enforced?

A. I think so.

Q. Was there any one else on this Board except Mr. McConnell and Mr. Moore?

A. Yes. Thomas E. Little, State Treasurer, was on the bond.

Q. This contract provides that a reduction in the wood might be made in the event the price was reduced by others. Do you know of any such reduction during the life of this contract?

A. No, I do not know that there was.

Q. Do you keep any record as Secretary of the Board which would show any alteration of terms if the contract had been made?

A. I do not. Such records were kept at the Penitentiary.

Q. Whose duty was it to keep such records?

A. Well, it was the duty of the clerk of the Penitentiary to make such records if such was kept.

Q. Who was the former wood agent?

A. J. F. Caley.

Q. Did he resign of his own accord?

A. Yes, sir.

Q. Did the Board have a contract with him?

A. He did as I understand it.

Q. Did you see Hall McConnell any time before this contract or after this contract?

A. I never saw him before to know him, but saw him afterwards.

Q. Did you realize when you did see him that he was under age?

A. No, sir. I did not think anything about it.

Q. For what length of time was this contract entered into?

A. I don't know for what length of time. It was rather indefinite.

Q. Did you not say in the beginning that the Superintendent employed Mr. Hall McConnell, or entered into a contract with him?

A.

Q. Then did the Board ratify or reject the appointment made by the Superintendent made during interval of a meeting?

A. Yes. He would bring them before the Board at the next meeting.

Q. Was that done in this case?

A. Yes, it was brought before the Board.

Q. Does the record show it?

A. The record shows that he was elected, which means that the contract made by the Superintendent had the approval of the Board.

MR. McCONNELL recalled, and says he was before the committee the other day.

(BY MR. PATTON.)

Q. Mr. McConnell, do you remember the contract entered into with Mr. H. C. McConnell?

A. Yes, sir.

Q. What quantity of wood did you have on hand at the time of contract?

A. Well, I could not tell as to the amount.

Q. How long did these contracts remain in force?

A. I could not tell you; though the books will show.

Q. When it was terminated in September, how much wood was there on hand?

A. Still I could not tell about that; but in September is the time we have the largest amount of wood.

Q. Was that the case this year?

A. Well, I could not say.

Q. Was this contract discharged? If so, in what way?

A. Yes, sir.

Q. As long as enforced, who attended to this contract at the time?

A. Hall C. McConnell.

Q. Was he here in person at that time?

A. Yes, sir.

Q. All of that time? Before the termination of this contract did any one else have charge in his stead?

A. I think that when Mr. Calif left that he succeeded him.

Q. Did Mr. Moore ever have anything to do of attending to this contract in person?

A. Yes, sometimes.

Q. Did he not for the time have the actual superintendency of this part of contract?

A. No, sir. I could not say that he did.

Q. If the boy was absent for a few days, did he attend to it?

A. I think the boy was sick at some time and during his absence Mr. Moore attended to it. Anything that Mr. Moore did in connection of this contract was gratuitous; he never received any pay for it.

Q. Did you handle much wood during this period?

A. Yes. But the loss was greater than his profits.

Q. At that time did not the Penitentiary supply the city with a greater portion of its wood?

A. I am unable to say as to the portion; there was a great deal of wood shipped in.

Q. Do you know of any large contractors in the city?

A. I do not know of any large ones; I think we handled as much or more than anybody.

Q. Was this contract terminated?

A. I do not know that I can say. Governor Jones called my attention to it one day. He asked if Hall McConnell was my son. I told him he was. Then he said: "I don't know that I was aware of that when I made the contract. I don't believe that I would have approved it if I had have known it. While I don't consider that there was anything wrong about it, some one might make remarks about it." I told him if that was the case and he didn't want to have anything more to do with it, we would just call it off. The boy had staid there all the summer and nothing doing and it was a hardship to cancel his contract just as something was doing.

Q. Then the contract was not cancelled because you were out of wood.

A. No, sir. The contract was cancelled about this time, as shown by the records.

Q. How old is your boy?

A. He was nineteen years old the August before the contract was made.

Q. After the termination of this contract how did the Penitentiary dispose of its wood?

A. In the same manner as previous to the contract of Mr. Calif—they took orders at the Penitentiary, delivered and collected.

Q. Was this wood sold at retail at that time, or in large quantities?

A. Both ways.

Q. Who was the largest purchaser?

A. We sold the other wood yards and in ten cord lots to various parties.

Q. Was there any corporation that bought wood in large quantities from the Penitentiary?

A. No, sir.

Q. You have a record of all sales made by Hall McConnell?

A. Yes, sir.

Depositions of witnesses taken before the Penitentiary Investigating Committee on February 4th, 1901.

GOVERNOR DAN W. JONES being recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Governor Jones, you have been sworn and have testified before this Committee on a former occasion?

A. I have.

Q. Are you acquainted with Mr. Hall McConnell?

A. Yes, sir.

Q. How long have you known him?

A. I don't know. I don't remember how long. I could not tell you. Since I became Governor, however. Some time after that. I don't think I knew him before that. I became acquainted with him sometime after I was elected Governor.

Q. Do you think you became acquainted with him during your first term of office as Governor?

A. It would be impossible for me to say. I have no recollection about it.

Q. Do you remember the occasion of the Penitentiary Board or Superintendent entering into a contract with Mr. Hall McConnell relating to the wood of the Penitentiary?

A. Yes, sir. It was after that time that I became acquainted with Hall McConnell.

Q. Do you remember when that contract was entered into?

A. It was after Mr. Calif left the Penitentiary—the Calif who had been there in the Penitentiary in some capacity.

Q. Do you remember the date of this transaction?

A. No. The contract will show for itself, I presume.

Q. On the minutes of the meeting it was sometime during January, 1898. Would that be correct in your opinion?

A. I could not answer a question like that because I have no recollection about it. I didn't keep the minutes.

Q. Then I will ask you, if to the best of your judgment, if that was not about the time—to the best of your recollection?

A. Having no recollection upon the question as to dates I could not tell you.

Q. Do you remember any of the terms or conditions of this contract?

A. If you will let me see the contract I will tell you.

Q. I will ask you then if this is the contract?

A. My signature is to it. Yes, sir, this seems to be the contract.

Q. How long after the execution of this contract did you become acquainted with Mr. Hall McConnell, one of the parties to this contract?

A. I will relate the circumstances. After this contract was made—I don't know how long after—not a great while—I learned that Hall McConnell was the son of E. T. McConnell and that he was a minor. This fact I did not know at the time of making the contract. After learning the fact I called Mr. McConnell's attention to it and told him that Hall being his son and a minor, and he being en-

titled to the services of his minor son, if he saw proper to claim them, the contract was not proper. Mr. McConnell replied that it was true that Hall was his son and a minor, but that he himself, E. T. McConnell, the father, had no interest whatever in and claimed nothing, but that Hall received for his own benefit whatever he might make out of the contract, and that he himself would receive nothing whatever from it. That he desired in this way to help his boy. Having no reason to discredit this, and knowing that I had made it a rule all my life to give to my minor children whatever they could make out of their own labor, and seeing there was a good bond, I made no further objection. This was the first time I knew that Hall McConnell was the son of E. T. McConnell, or that he was a minor. In point of fact, I don't know how I came so to conclude, but I was under the impression at the time the contract was made that Hall was a nephew of E. T. McConnell and the son of a widowed sister of his. This had not been told to me by E. T. McConnell, nor do I know how the impression came upon my mind.

Q. How long a time elapsed after the execution of this contract before you had this conversation with Mr. McConnell?

A. As soon as I learned that Hall was his son; but the time I don't remember.

Q. Could you approximate the time?

A. No. Because I have no recollection as to the date whatever. It is an immaterial matter I should say,

however, whether it is one day or one year. The effect was just the same. My conduct would have been just as it was.

Q. You say, I believe, that when you were informed that the proceeds of the contract did not go to E. T. McConnell, you let the matter drop?

A. Yes, sir. Finding that the boy was acting for himself and had a good bond. The bond had been approved.

Q. Do you know how long this contract remained in operation?

A. I don't. It was during the season that he sold wood, I think. I could not be definite about that.

Q. Then you don't know when it terminated?

A. No, sir. I could not tell at all.

Q. Do you know why the contract was cancelled or annulled?

A. I don't know when it was annulled. I don't know whether there was any order of the Board about it. I know we quit keeping wood after a certain time.

Q. Do you remember making the motion in the Board meeting that the contract referred to should be annulled?

A. I have no recollection upon that subject. If the records of the meeting show that I made such a motion it is doubtless true; but I have no recollection of it now. You must remember that there were hundreds and hundreds of transactions; there was a meeting every week reg-

ularly when we could get a quorum present, and everything connected with the Penitentiary was discussed.

Q. Then you don't know why the contract was annulled?

A. I have no recollection about it.

Q. Then you don't remember that it was annulled because of the fact that the party, Hall McConnell, was the son of E. T. McConnell, and a minor?

A. As I say, I have no recollection of it. If you have the minutes of the Board and they show that fact, I would like to see it. The minutes evidently speak the truth.

Q. I believe you have stated that the fact that he was the son of E. T. McConnell and a minor, didn't influence you in moving that the contract be annulled?

A. I don't know. I think this, that as I say, I could see no reason, if the boy was acting for himself, and not in the interest of his father, why he should not have been employed as well as any one else. The fact of his being the Superintendent's son would not have prevented me from making a contract with him, he being otherwise qualified.

Q. We did not call that in question. The question asked was whether or not that fact actuated you in making this motion, if you did make this motion?

A. As I said, I have no recollection about it. There might have been various reasons, like cancelling the contract with Calif. Calif was going to move off and wanted it cancelled. There had to be some action, I suppose, of

the Board, because it says there that the contract was to be continued as long as agreeable to both parties. The contract showing that it was held as long as agreeable to both parties would certainly require some order of the Board to cancel it, if it was desirable that it should be cancelled for any reason whatever. But what the reason for cancelling or annulling it was, I don't now remember.

Q. At least you have stated that it was not because of the fact that he was the son of E. T. McConnell or that he was a minor?

A. I don't think that would have influenced me to annul the contract. But as I said before, I have no recollection of the circumstances connected with and about it. Might have been a request of Mr. McConnell himself, or might have been for some other reason. I don't remember.

Q. I believe you stated that it didn't influence you?

A. I never said that. I stated distinctly what I have stated. Please let the record show what I said. I said I have no recollection as to the cause.

Q. I will ask you then again, did you not state that you were not influenced by the fact that he was a minor and the son of E. T. McConnell? I want to know whether or not you stated this before?

A. My testimony ought to show for itself what I said, but if you desire me to repeat, I will say that when I learned that Hall McConnell was the son of E. T. McConnell, and was a minor, I mentioned this fact to Mr. McCon-

nell and told him that I did not know this at the time of making the contract. That Hall being a minor would entitle him, the father, to the proceeds of his labor if he desired to have them, and that if he were getting such proceeds it was certainly an improper contract to make. Mr. McConnell replied that it was true that Hall was his son and a minor, but that he himself received nothing whatever from the proceeds of his labor, and would receive nothing from this contract—that Hall would get it all himself. That he wanted to help his boy in getting employment, and that he, the father, would receive none of the benefits of it. After this statement from E. T. McConnell, which I was prepared to believe, because it had always been my rule in life to give my minor children the benefits of any labor or contracts they might make, and finding that there was a good bond, I made no further objection. When the matter came up in the Board, if it be true as you say, that the minutes show that the contract was annulled upon my motion, I have now no recollection of the reasons which prompted me to make that motion. That is about what I said.

Q. Do you know the quantity of wood on hand in September, 1898,—during the month of September?

A. I should have a remarkable memory if I did, because it was coming in and being sold out every day of the world.

Q. Do you remember whether or not you handled much wood during that season?

A. I could not say, Mr. Patton. The books will show how much wood was disposed of—the Penitentiary books. Those accounts are kept by the Financial Agent and Superintendent.

Q. Then if the Penitentiary was out of wood, that is, wood to be sold on the market, you have no recollection of it?

A. I could not tell you now when we quit cutting wood for sale. I remember one winter—I think winter before this last—at least the very cold winter, whenever that was—the people in town got out of wood and there was a great deal of suffering for it. And we had a great deal of wood down near England, but the condition of the ground was such that we could not haul it, it was so excessively wet and rotten, you might say, that black land. There was an immense demand for wood and we supplied it as far as we could. But as to telling you the quantity sold and what they had on hand from time to time, I can't do it. The books of the Penitentiary ought to be able to show that fact, and I suppose do. I don't know.

Q. Do you know how the Penitentiary wood was disposed of after the termination of this contract with Hall McConnell?

A. I could not tell you whether we made any other contract or not, and I will tell you the reason for making this one: In making the sales of wood we found it a very annoying matter to make the collections. Everything in this town is usually sold on thirty days, and collections

made the first of the month. After investigating the matter carefully the Board found it would be easier to employ somebody to attend to the wood exclusively, upon the terms as stated in this contract, than it was to go on in the old way. We made the first contract with Mr. Calif, a son-in-law of Governor Churchill, and after he left this contract was made. I don't remember how the sales and collections were made afterwards. I could not tell you at this date. Of course, the probability is that the books will show. In fact, this kind of a contract was made more at the request of the Financial Agent than any one else, he having the duty of making these sales and making the collections.

Q. Is it not a fact that since the termination of that contract the Financial Agent has had charge of the wood and has sold it directly to the consumer?

A. I don't know how he has been managing it. It is made his duty by the State, as I before remarked, to attend to these things. Whether he made the sales and collected in person, or hired some one to do it for him, I don't know.

Q. Do you have any recollection of the Board's having entered into a contract since that time similar to the one with Hall McConnell?

A. I have no recollection upon the question further than I have stated.

(BY SENATOR BUCKNER.)

Q. Had it been the custom before Mr. Calif was

given this occupation to make contracts of this character at all in regard to the minor details of the financial management?

A. None at all.

Q. There was no law requiring that the Board should enter into any contract with anybody in regard to the minor details of the financial management?

A. No, sir.

Q. Is that a part of the duty, as prescribed by law, of the Financial Agent?

A. Yes, sir.

Q. If the Financial Agent should present to the Board a proposition that the Board thought was economical, it might relieve him of some of the details?

A. Yes, sir.

Q. That, however, was in the discretion of the Board without being prescribed by law?

A. Yes, sir.

(BY MR. PATTON.)

Q. Who was the Financial Agent at the time of the Hall McConnell contract?

A. J. C. Massey.

JUDGE FRANK HILL, being recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. You have appeared before this Committee on a former occasion and been sworn?

A. I have.

Q. I believe you stated that you were a member of the Penitentiary Board of Commissioners in the year 1898?

A. 1898 and 1899. I became a member of the Board on the 1st of November, 1898.

Q. Do you know whether or not when you were inducted into office that there was any quantity of wood on hand belonging to the Penitentiary?

A. I know there was some wood.

Q. Was the Penitentiary selling wood on the market during that fall and winter?

A. Yes, sir.

Q. Do you know how that wood was disbursed?

A. At the time that I knew of it there was no contractor, nobody between the Penitentiary management and the buyers.

Q. At any time since then has any one acted as contractor between the Penitentiary and the consumer?

A. No, sir.

Q. Since you have been a member of the Penitentiary Board has there ever been anybody employed to sell wood cut by the Penitentiary management and for the Penitentiary?

A. I don't catch the meaning. You mean on a commission? There was no one to my knowledge except the Financial Agent and the Clerk.

Q. Who was the Financial Agent since you have been in there?

A. Massey was Financial Agent when I was inducted into office and was re-elected and afterwards resigned and M. D. L. Cook was elected.

Q. When did he resign?

A. I can't remember the date. Somewhere in the past year, 1900. Somewhere about the middle of the year.

Q. How did they sell that wood as a rule? In cordwood lots or entire quantities, or how?

A. It was cut in short lengths; either split or in blocks. Most of it sold direct to the consumer. To my knowledge they did not sell it by having bids made on large quantities of it. I fear that my answer just given may be misleading, as I recollect that at the time they began building on the new State House the Penitentiary had some wood where it had been cut that was sold in cordwood lengths and not direct to the consumers. My recollection is that this was bought by Mr. Reeves, but my recollection is not sure about this and I don't like to rely on it, but prefer to get the books themselves and stand by them to refresh my memory.

Q. Where does Mr. Will Reeves live?

A. In the city. In Little Rock.

Q. In what business is he engaged?

A. He is a contractor.

Q. Has he any other business here that you know of?

A. I know very little about his business.

Q. You don't know of his being connected with any other business or firm in the city?

A. No. I have no personal knowledge of his business at all, except as a contractor.

February 5th, 1901.

E. T. McCONNELL, having been first duly sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. You have been called and testified before?

A. Yes, sir.

Q. I believe you stated that you were Superintendent in November, 1899?

A. Yes, sir.

Q. Do you remember of you as Superintendent, with the Financial Agent, entering into a contract with Mr. W. A. Bright concerning the construction of a railroad in Washington County?

A. Yes, sir. There was such a contract made by the Board.

Q. I will ask you to look this over and see if that is the contract?

A. Yes, sir. I recognize my signature to this as Superintendent. Mr. Massey was Financial Agent.

“Article of agreement made and entered into this 3rd day of November, 1899, by and between J. C. Massey, Financial Agent, and E. T. McConnell, Superintendent of the Arkansas State Penitentiary, parties of the first part, and W. A. Bright, party of the second part,

Witnesseth: That the party of the first part have this day hired to the party of the second part sixty to 100 able bodied convicts for the period of twelve months beginning on the 13th day of November, 1899, for the sum of thirteen (\$13.00) dollars per month for each convict, payable at the end of every ninety days, said convicts to be worked and managed under the control of the Superintendent of the Arkansas State Penitentiary, on a railroad to be constructed West from the City of Fayetteville, Washington County, in this State.

The said Bright having promoted the construction of the proposed railroad, and being the owner in person of forty thousand (\$40,000) dollars in notes of citizens of said county given to aid in the construction of said road, he, the said W. A. Bright, agrees that the parties of the first part shall have a first lien upon such notes for the payment of the labor of such convicts. The said Bright agrees to hold the said notes as trustees for the party of the first part; also the party of the first part shall have a lien upon the bed of the road that may be constructed by the labor, or to the construction of which the labor of said convicts may contribute under the provisions of an act of the General Assembly of the State of Arkansas, entitled "An Act to amend Section 6251, 6252, and 6253 of Sandels & Hill's Digest approved March 31st, 1899. And the said W. A. Bright, as the trustee of the party of the first part, shall collect the money due on said promissory notes and as collected pay the same over to the party of the first part until the labor of said convicts be fully paid; and such payment shall be a full release and discharge of the lien of the party of the first part upon said notes and upon the road-bed of the said railroad.

The said convicts may be worked upon such other work as may be approved by the Board of Penitentiary Commissioners. No deduction for loss of time of any of said convicts shall be made except in case of sickness or

inability, and when one of the convicts become physically disabled from work he shall be exchanged for another man.

Parties of the first part are to feed, clothe and guard the convicts at the expense of the State. The party of the second part agrees to furnish comfortable stockades for the convicts and quarters for the warden and guards, and fuel for the stockade.

This the 3rd day of November, 1899.

E. T. McCONNELL, Superintendent,

J. C. MASSEY, Financial Agent,

DAN W. JONES, Governor,

FRANK HILL, Com. M. M. & Agr.

ALEC C. HULL, Secretary of State,

Parties of the First Part.

W. A. BRIGHT, Party of the Second Part,

Attest: ALEX C. HULL, Secretary of State.

Q. According to the provisions of this contract, Mr. McConnell, did you require W. A. Bright, party of the second part, to execute a bond or any kind of indemnity to the State?

A. No, sir. I don't think there was any bond given. I was present when the contract was made—that is, I was present at the meeting of the Board, and the proposition was made there and the contract accepted. The question was discussed as to bond and he stated that he preferred—my recollection is—he preferred to give one of those security companies if he could do it, and it was decided by the Board on the statement of some member of the Board that the last act of the Legislature gave them a lien on the work and there was no bond necessary?

Q. It was decided, then, that the bond was not necessary?

A. Yes, sir. That was about the sum and substance of the bond business. I know that the Board did not require one or we would have demanded one.

Q. This, I believe you stated, was in November, 1899?

A. Thirteenth of November, 1899.

Q. Did you comply with the terms of the contract binding upon you the Superintendent?

A. Not in full. I was unable to do so from the fact I didn't have the men. This contract called for 100 men. We never did have, I would say, an average of more than half that number. Sometimes more and sometimes less. I got a daily report and it shows the number of men in each and every camp, the number sick and the number chopping cotton and plowing. We established a camp up there and graded twelve or thirteen miles of road.

Q. Is the amount owed by Mr. Bright for convict hire now due?

A. Yes, sir. It has been past due.

Q. Has he ever settled in part or in full with the Penitentiary authorities?

A. Mr. Bright has sold his interest in the road to some parties who have assumed \$8,882.00 which was due the State, and they have got a bond which was approved by the Board the other day for this money, and for such other hire of convicts whatever amounts may be due for the hire of convicts in the sum of \$10,000.00, the money for the hire of the convicts to be paid quarterly; the \$8,000

and something, which was secured, is to be paid—I could not give you the dates—in a little over a year.

Q. Was not that contract made by the present Board a new and independent contract?

A. Yes, sir. I suppose you might term it that. Mr. Bright had sold conditional to those parties his interests, and these are different parties.

Q. Without making this new contract referred to, could the State, in your opinion, have recovered the indebtedness due by Bright on the original contract?

A. I don't know enough about his financial condition to say that. They, of course, would have the road which these people gave \$20,000.00 for for the \$8,882.00. They gave him \$20,000 for his interest in the road and the State had a lien on the whole thing for the work, so that the State was not in a condition to lose much, because if they had taken the work anybody would have paid the State debt for the road. These men paid \$20,000 for it. The State was in this condition: that they would have had to take charge of the road, I suppose, but I don't consider that they were ever in a condition where they would have lost their money, because there was hundreds of dollars done by free labor, and the work done, according to the engineer's estimate, was \$42,000.

Q. The possibility of the State ever realizing the amount due her would depend on her ability to dispose of the road-bed, or secure some one who would take charge of the property?

A. Certainly, if I understand it. We had a lien for the work. Parties went over the road and gave \$20,000 for it and I don't consider that we have ever been in a condition to have lost a nickel. We have been in a condition to be held up until certain deals could be made. Anybody would have stepped in and paid the State debt to have gotten possession. In fact, there was several fellows at Fayetteville who told me it would not take twenty-four hours to do that.

Q. Then another indemnity that I see included in this contract is that you as Agent of the Penitentiary were to retain a lien on \$40,000 in notes against the citizens of Washington County?

A. Yes, sir. We had that security in addition to the road-bed. There was \$40,000 that was subscribed and I saw the subscription list.

Q. Do you know whether any of those notes have ever been paid or not?

A. No, sir. I don't know. I know Mr. Bright set part of these men that subscribed—some of the weak brothers as he termed them—to work out their subscription on the road. And I know there was free labor with teams on the road; as to the amount I could not say.

Q. You don't know, then, that one payment on all of those notes had fallen due and been collected?

A. No, sir. I don't know. That was Mr. Bright's business. I had nothing at all to do with it. I was satisfied he had made some collections from what he said.

Q. But the State never realized anything from the proceeds of this collection?

A. No, sir. I don't know what collections were made. I know there was some men with teams on the road running plows. I was up there several times and he said that was some fellows working out their subscriptions.

Q. Then if any part of these notes had been paid the State never demanded her right under this lien?

A. Not that I know of. That is out of my part of the business. The financial part of the business I never handled a cent of the funds. There was one man that subscribed a donation up there at Prairie Grove, and we had to buy supplies up there, and we bought some flour, about \$165.00 worth, and that is credited on Mr. Bright's account as payment. If he has paid anything but that I have no knowledge of it. In fact the statement made by the bookkeeper don't show anything but that. They telephoned me to get Mr. Bright's account. There was \$8,882.00 and a credit of \$165.00.

Q. I see the name of the party of the second part is W. A. Bright. Do you know whether or not he had any partner or was acting for any one else or not?

A. I don't know of my own knowledge.

Q. What was your understanding?

A. There was a man by the name of Pitman at Prescott; his letterhead shows he was President of the road. I was getting letters from Mr. Bright in regard to the business. Pitman was President of the road, and

Baggett was Vice-President, I think; Stuckey, Attorney, and Bright General-Manager. Whether he owned an interest in it I don't know. I talked to him very little as to his part of the business. I went up there after the contract was made and carried the men. The whole country is wild.

Q. Did the State ever furnish any supplies or building material to the road aside from necessary clothing, food, etc., for the convicts?

A. No, sir. The State never furnished anything except according to that contract. Of course they had to maintain them, guard and clothe them.

Q. Did you ever furnish any material?

A. I sold Mr. Bright from Clarksville. I have two saw-mills up there. I drew him a plan of a movable stockade. I told him I thought of building it in sections with bolts, and discussed the matter with him going up one day on the train. After he got up there he says "if you have a man at Clarksville that can make that, make it and load it and send it up." I did so. I went up home on a visit and told my man in charge of the lumber yard; he drew his plans and made some changes in mine and I adopted his plans and he loaded that on the car and shipped it to Fayetteville to Mr. Bright.

Q. You individually sold the lumber to Mr. Bright?

A. Yes, sir. It was shipped from Clarksville. I never saw it. I got up there when they were hauling it out.

J. C. MASSEY, having been sworn, testified as follows, to-wit:

Q. During the month of November, 1899, what was your occupation, or what official position did you hold?

A. Financial Agent of the Penitentiary.

Q. Do you remember of executing a contract or entering into a contract, you and the Superintendent of the Penitentiary, with W. A. Bright, concerning the building of a railroad in Washington County?

A. Yes, sir. I signed the contract. I didn't get up the contract.

Q. You were one of the parties to the contract?

A. Yes, sir. Principal in the contract.

Q. I will ask you, if you as Financial Agent, or the Superintendent, demanded that a bond be executed for the fulfillment of the contract on the part of the party of the second part?

A. Mr. Bright spoke to me about a bond, and I told him if the contract was made with me, I would want him to give bond in double the amount. He made his application to the State and they granted him a contract without bond.

Q. Then the Board decided the matter before the contract was ever executed?

A. Yes, sir. The contract was voted on before it was executed and signed. All the contracts were done that way.

Q. Do you know who got up this contract? Did you?

A. No, sir. I didn't. I don't know.

Q. Were you present at the Board meeting when this contract was acted upon?

A. I think I was. I don't remember now. I am sure I was.

Q. Do you remember whether anything was said about the indemnity or the bond?

A. I think Mr. Bright asked for the contract without giving bond, and offered security on the road-bed, and I think that they also had some notes, probably \$20,000, or something of that kind, that Fayetteville was to give, and that he was made trustee in the contract to handle these notes and make collections, and turn the money over to the State. That is my recollection of the contract. I have not read it since it was signed.

Q. I will ask you if this is the contract?

A. Yes, sir. This is my signature to it. That is the original contract. It is \$40,000 instead of \$20,000. I was speaking from recollection of the matter.

Q. Is the amount owed the State by the party of the second part now due?

A. Yes, sir. It is past due. The contract states it was to be paid at the end of ninety days. That is the 3rd day of November, 1899.

Q. Did they ever make full payment or part payment while you were acting as Financial Agent?

A. No, sir. Nothing paid.

Q. How long did you act as Financial Agent?

A. I went out the 1st day of February after this contract was made—just about a year ago—1st of November, 1899. This contract was made in November, 1899. The ninety days was just about up when I went out. It was not quite up, the first payment was not due.

Q. If any part of these subsidy notes had been collected before you retired from office, the State received no part of the proceeds?

A. I had no knowledge of it. No, sir. There was nothing paid.

Q. If it had been paid would it not have come into your hands as Financial Agent?

A. Yes, sir. It should have come in that way.

(BY MR. WILLIAMS.)

Q. How was this contract let to Mr. Bright? Through advertising and competitive bids?

A. No, sir. He simply made his application for the contract. I suppose there is a written application on file.

Q. Was there any other application for those same laborers at that time or near that time?

A. I don't know that I could say; but there possibly was. There was always a demand for convicts; we had more demand for labor than we had labor to supply.

Q. Have you any recollection as to any other parties desiring this labor, either just before or about that time? If so, who were they?

A. I could not answer that question without going back over the records. There was always applications in. There was no trouble letting out the men.

Q. What is your recollection as to any other parties desiring to pay more or less for those hands at that time?

A. I don't remember of any offers.

Q. Do you know who else was interested with Mr. Bright in this contract?

A. No, sir.

Q. Have you any information in regard to it?

A. No, sir.

Q. No information as to any other party being interested in it?

A. I don't know about intimations.

Q. When I say whether or not, you know I don't mean to know a thing of your own knowledge—personal knowledge—but as to whether or not you had any general information in that regard?

A. No, sir. I didn't.

Q. Have you had any since the contract?

A. No, sir.

Q. Have you ever had any before that?

A. No, sir. Mr. Bright told me that he was making arrangements with Eastern parties to get the money, but just what interest they would have in the road I don't know. But he had arrangements made to get the money to build the road. Who they were I don't know.

Q. Do you state now that you have not received any

information that any other parties in this State were interested with Mr. Bright either directly or indirectly in the securing of this contract, or in the working of it there?

A. I can't say that I have.

(BY MR. PATTON.)

Q. Are you acquainted with Mr. Bright?

A. Yes, sir.

Q. What had been his business prior to entering into this contract?

A. He was in the insurance business—Reeves & Bright. I think he was also interested in the Arkansas Construction Company that had been hiring some convicts. In fact I know he was. They had been doing some work at Pine Bluff and some other points.

Q. Did you ever understand that Mr. Bright was a man of large capital?

A. No, sir. My understanding was he was limited in money—not any considerable amount.

(BY MR. WILLIAMS.)

Q. Do you know who composed the Arkansas Construction Company?

A. I don't believe I can answer that. They have a contract that will show. I think Reeves & Bright and Mr. Cook.

Q. Which Cook was that?

A. M. D. L. Cook. There may have been other

parties interested. There are so many contracts I don't remember the parties that are interested in them.

JUDGE FRANK HILL, recalled, testified as follows, to-wit;

(BY MR. PATTON.)

Q. I believe you stated before that you were a member of the Penitentiary Board of Commissioners in November, 1899?

A. Yes, sir.

Q. Do you remember of the Penitentiary Board entering into or approving a contract with Mr. W. A. Bright to construct a railroad in Washington County?

A. I do.

Q. I want to ask you if any bond for the discharge of his obligations was ever executed by him?

A. No, sir. Not that I know of.

Q. Did the Board ever demand or request him to execute a bond?

A. No, sir.

Q. I will ask you if this, as you understand it, is the contract entered into between the Penitentiary Board and Mr. Bright?

A. It is.

Q. Is it not a fact that according to the provisions of that contract that the State should hold a lien on certain subsidy notes executed by the citizens of Washington County?

A. Yes, sir.

Q. You are a citizen of Washington County?

A. Yes, sir.

Q. Are you not reasonably conversant with the state of affairs there in regard to this railroad?

A. I am.

Q. Do you know whether or not a part of these notes have ever been paid by the citizens there?

A. There has been—I am not certain, speaking from memory—\$165 paid.

Q. Do you remember how these notes were executed? That is, as to when payment shall fall due?

A. I do.

Q. Can you state, then, the terms and conditions of these notes as to when payments should fall due?

A. A portion of the notes were made payable when the road should be running into Prairie Grove, a portion of them made payable when the road should connect with the Port Arthur route. There were probably some other notes with some other provisions but I can't remember what they were.

Q. Did you execute one or any of these notes?

A. I did. As a citizen of Washington County.

Q. But you don't remember when all the payments should fall due?

A. The payments of the note that I executed, one of them fell due when the road was running into Prairie Grove,

the other when it makes connection with the Port Arthur route.

Q. Those were the only conditions of the note that you executed, then?

A. Yes, sir. As I recollect it now.

Q. You have not understood, then, that one payment on a certain set or series of notes there has fallen due and has been paid?

A. I didn't say that.

Q. Do you understand that payment on one set or series of notes has fallen due and has been paid?

A. I think a portion of it has been paid.

Q. Do you know whether or not the State ever received the proceeds of this payment?

A. I do.

Q. Did they receive it?

A. As I answered before, \$165 or thereabouts.

Q. Then that \$165 is all the payment you understand that has fallen due and has been paid?

A. Oh! no. I didn't say that at all. \$165 was paid that went to the Penitentiary credit. What else has been paid I don't know but from hearsay. I understand a portion of it has been paid, but it is only from hearsay.

Q. What is your information as to the amount that has been paid?

A. I have no knowledge further than I stated, except that a portion of the Prairie Grove notes amounting, I think, to \$10,000, became payable in the judgment of

Mr. Bright, but not in the judgment of some of the makers of these notes. In other words, the notes were in controversy.

Q. You have not answered the question.

A. My understanding is that perhaps half of that amount has been paid. It is just simply a condition that arose there that I know nothing of except from hearsay.

Q. Was that amount ever turned over to the State subject to the lien that she retained on these subsidy notes?

A. No, sir. Except the \$165.

(BY SENATOR BUCKNER.)

Q. Do you have a personal knowledge of any money being paid, or is it just rumor?

A. Except the \$165, no.

(BY MR. WILLIAMS.)

Q. We asked you on yesterday about some wood having been sold at some other places than Little Rock. How was that wood bought—advertising and competitive bidding?

A. I don't know. There was no advertising that I know of.

Q. Was there any competitive bidding for the wood between different parties?

A. I think so, but I don't know.

Q. Do you recollect who did compete?

A. No, sir.

Q. Do you recollect what the price paid per cord was?

A. I don't recollect. The books show.

Q. Do you recollect the quantity?

A. No, sir.

Q. Or where it was?

A. There was some sold down on the Beakley place at England, Ark.

Q. Do you know who it was that bought it?

A. No, sir. The name was not familiar to me and I don't remember.

Q. You stated on yesterday that you thought Mr. Will Reeves bought the wood?

A. I think Mr. Reeves bought some wood.

Q. Where was the wood that Reeves bought?

A. I don't know where that came from.

Q. Do you know how much there was?

A. No, sir.

Q. Have you any idea?

A. No, sir.

Q. Or the price paid per cord for it?

A. I don't remember the price paid. It is a matter of record.

Q. He didn't buy this at the Beakley place?

A. I don't know that.

(BY SENATOR BUCKNER.)

Q. Do you as a member of the Penitentiary Board,

know of any law that compels you to require competitive bidding for anything that the Penitentiary sells?

A. No, sir.

(BY MR. WILLIAMS.)

Q. As a matter of fact, do they ever have competitive bidding for anything it sells?

A. I think they do. But I have no personal connection with it because the sales are made by the Financial Agent.

(BY MR. PATTON.)

Q. You say you are a citizen of Washington County, and familiar with the state of affairs existing there in regard to this railroad?

A. I am.

Q. Had the new Board not executed this new contract, how could the State have ever secured the payment of the indebtedness due her?

A. I thought that was the most business-like way to secure the payment of it. And thinking so I have spent a good deal of time making the arrangement made by the new Board.

Q. You think this was the most business-like way? Could you think of any other satisfactory solution to the question?

A. I could not think of any other solution that promised so good results to the State.

Q. Can you think of any other solution?

A. The State had a lien and there was a way of going into the courts, asking a receivership and selling the property through the courts.

Q. What would this lien, if foreclosed, be worth if you didn't have promoters and capital who were willing to complete the work?

A. You mean what would it sell for if there were no buyers?

Q. I will state the question again. What would the lien, if foreclosed, be worth to the State if you could not secure the aid or assistance of capital or promoters to complete the work?

A. I don't know.

Q. Do you think it would be of any value to the State?

A. I think it would sell for something. Do you mean for me to put a value on it for the State to continue to own in that condition?

Q. Do you think it would be of any value to the State? That is, if you could not find capital and promoters to complete it?

A. No. I think it would be of little or no value for a holding for the State.

(BY SENATOR BUCKNER.)

Q. Don't you think that if the State enforced its lien and took possession of that road-bed that there would be a sale for it?

A. I do.

Q. What would it probably bring under the conditions that exist now?

A. It did bring \$20,000 and something upwards. I don't know the amount.

(BY MR. PATTON.)

Q. But was that not conditional upon the fact that a renewal of the convict lease could be secured?

A. Perhaps, in a measure.

February 7, 1901.

GOVERNOR DAN'L W. JONES, recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. I believe you stated that you were a member of the Penitentiary Board during the years 1898-9?

A. Yes, sir.

Q. Are you, or were you at any time, ever acquainted with a man, a Warden, I believe, by the name of Kline?

A. I think I have seen him. I know there was a Warden of that name. I don't know that I would know him by sight now.

Q. You have heard of him?

A. Yes, sir.

Q. Was your attention ever called to the fact that there was a shortage in some of his returns or reports on

cotton seed on some plantation where he was Warden?

A. If that was the man. I know there was some trouble about some Warden.

Q. Do you remember when that was?

A. I do not. I could not recollect the time. It was either in the cotton season of 1897-8, or 1898-9. I don't recollect the time. I think it was one of those seasons.

Q. You say, your attention was called to this shortage in his report or in his returns? In what way was it called to it?

A. Now, as I remember—I will have to speak entirely from memory, and may be inaccurate in some respects—the Financial Agent, Mr. Massey, reported that Kline had not accounted for all the cotton seed, and that there was some cotton seed down here at one of these mills that he thought belonged to the Penitentiary, and that it was there in Kline's own name. We had an investigation of the matter. Kline made some showing that he had bought cotton seed down there for some one, and as I remember now, we, in the meantime, notified these cotton seed mills not to pay Kline until the matter was investigated. Now, what the result of it was has passed out of my mind. I know he made some showing that he was buying cotton seed for somebody and had some interest in some cotton seed of his own. The Board was not satisfied, and my recollection is we instructed the Superintendent to discharge him. I am not certain about that. It

was in such a shape we could not hold the Oil Mill and could not hold the money due him there. I have an indistinct recollection about it.

Q. You think you did not recover the money from the Oil Mill?

A. I think not. I may be mistaken.

Q. You don't remember that a check for a certain amount—I have forgotten the amount—on one shipment was recovered or captured by some of the management of the Penitentiary, that was made payable to Kline?

A. That may be true. Mr. Massey was more familiar with that transaction. He brought the matter up. I know Kline accounted for a good deal of cotton seed by saying it was rotten. His explanation was never satisfactory to me, and I don't know what Massey did.

Q. Do you remember the amount of the reported shortage?

A. I do not.

Q. You think that your recollection is that he was discharged?

A. I think so. I am not sure about that, though. It occurs to me that he was. Mr. Massey was the Financial Agent and first came to me about this matter. I had a meeting of the Board and had him brought before it and we had Kline summoned. I know that Massey used every effort to collect the amount, but how he succeeded now has passed out of my mind.

Q. Your attention was called to the transaction about

the time the seed was shipped, or about the time this check was possibly recovered, wasn't it?

A. About that I am not sure. It seems that Mr. Massey had discovered in some way that this cotton seed was down there to Kline's credit. That first caused him to investigate. As I remember he went to Pine Bluff to look it up. It is indistinct to my mind.

Q. You don't remember, then, whether your attention was called to it about the time he went to Pine Bluff?

A. It was called to it before that because he spoke of going to Pine Bluff and looking at the bank accounts and I recollect I advised him to go and see what he could find out. I think that he discovered that there was money that had been paid to Kline. I know that Massey was considerably disturbed about it.

Q. If Mr. Kline was discharged, according to your custom, did it require action of the Board to discharge him, or was the Superintendent authorized to discharge?

A. We never interfered with the Superintendent in employing or discharging Wardens unless in a case where we thought the Warden was an improper man. I know the Board determined to have him discharged, but whether, after his explanation, he was discharged or not I don't know.

Q. Do you remember the impression made upon your mind as to whether or not the charges were well founded?

A. I never was satisfied with Mr. Kline's explanation. I know I made this remark, and I think I asked him the question "if he thought it was right for him to be dealing in cotton seed for other people when he was representing the State down there. That I thought it would conflict with his duty to the State; that I didn't like his dealing in cotton for others, as it was a very questionable transaction." No one seems to have known—that is, no member of the Board seems to have known—he was dealing in cotton seed up to that time.

Q. I believe you have stated that you did not remember distinctly whether or not he was discharged?

A. I don't. I will say this: Sometimes in regard to a Warden—it was a hard matter to get the proper kind of Warden—sometimes a Warden was retained if the Superintendent and Board were not satisfied until some suitable person could be gotten. It is rather a difficult kind of a place to fill properly. We wanted to get humane men and men to look after the interest of the State. And they were very hard to find for the amount of salary we felt authorized to give. I remember when I went into office there was several complaints, and Mr. McConnell said "as long as I can only give them \$40"—I believe that was the amount—"a month, I can't get proper men."

Q. You don't know that any one ever reported him to the civil authorities; that is to the grand jury?

A. I don't know.

Q. You have no recollection of it?

A. No, sir. I think from the evidence before us it would have been a hard matter to make a case against Kline, as I recollect it now. It left my mind not at all satisfied with respect to Kline, and yet not sufficient evidence to hold him guilty. I don't remember that the matter has ever come to my attention since we finally disposed of it. I think now Mr. Massey and I discussed the question first of having him arrested and I suggested he had better go and find out and let's see what we are doing and get the facts in the case. As to what was done I don't remember.

JUDGE FRANK HILL, recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. You have testified before that you were a member of the Penitentiary Board in the fall and winter of 1898 and 1899?

A. Yes, sir.

Q. Did you ever know a man by the name of Kline who was a Warden, I believe, in the service of the Penitentiary?

A. Yes, sir.

Q. Did you as an individual or a member of the Board ever have your attention called to the fact that there was a shortage in his reports or returns, or something of of that nature, down at the camp where he had charge?

A. No. There was no shortage in his report,

Q. Did you ever hear that there was a certain amount of cotton seed missing that should belong to the Penitentiary?

A. Yes. It was reported that some cotton seed that belonged to the State had been sold without authority of the State.

Q. Was not suspicion directed towards Mr. Kline for misappropriating this cotton seed?

A. Yes, sir.

Q. Did you say that you as an individual, or the Board as a whole—your attention was called to it as a member of the Board, I mean?

A. I think my first information was a statement in the Board meeting.

Q. Was any steps ever taken to investigate as to whether or not Mr. Kline had been guilty of stealing the cotton seed or not?

A. The Financial Agent made collections, as I understand, for the cotton seed.

Q. Was any steps ever taken by the Board to investigate as to whether or not Mr. Kline had been guilty of stealing the cotton seed?

A. I think the Financial Agent was directed to collect for whatever had been taken.

Q. That is not my question. Was any steps ever taken by the Board to investigate as to whether or not Mr. Kline had been guilty of stealing the cotton seed?

A. Not by the Board except through the Financial Agent.

Q. Then Mr. Kline was not summoned before the Board?

A. Mr. Kline was before the Board.

Q. Why was he brought before the Board if no steps were taken to investigate as to whether or not he had been guilty of any misconduct?

A. As I recollect, he was brought before the Board by the Financial Agent, or asked to come before the Board, perhaps.

Q. When he was before the Board what steps did the Board take?

A. My recollection is that he was promptly dismissed, and that the Financial Agent was instructed to secure whatever property belonged to the Penitentiary.

Q. When was your attention called to the fact that there was a shortage in his affairs? Was it about the time that it occurred or not?

A. About the time that it occurred.

Q. Do you know when that was?

A. I can't remember the date.

Q. Wasn't it in the Fall of 1898?

A. I think it was.

Q. You say he was ordered discharged? Was that by a vote or resolution of the Board?

A. I have no distinct recollection of it now, nor that he was discharged.

Q. You are certain, however, that he was promptly discharged?

A. I am not certain whether he went from here back to the camp or not as Warden, but I think some one else was placed in his stead at once.

Q. Whose duty was it to discharge him—the Board, the Financial Agent or the Superintendent?

A. The Superintendent appoints, subject to the approval of the Board.

Q. Whose duty was it to discharge him—the Board, the Financial Agent or the Superintendent?

A. I think the Superintendent.

Q. Then if the Board decided that he should be discharged the Superintendent was instructed to do so?

A. I can't recollect whether he was instructed by motion or not.

Q. If he were not instructed by motion or by action of the Board, how would he get his authority to proceed?

A. He had the authority.

Q. He has the authority, then, and the responsibility would be on the Superintendent and not the Board?

A. I think there would be responsibility attached to the Superintendent, but I don't think the Board would be relieved, if there was dishonesty shown.

Q. Do you know that he was promptly discharged?

A. That is my understanding.

Q. Do you remember where you got your information?

A. No, sir.

Q. Did you say, or not, that the Board took some steps to investigate whether or not he had been guilty of misconduct?

A. I said Mr. Kline was before the Board, but I don't know whether some member of the Board ask that he be there, or whether the Financial Agent asked that he be there. I only know he was there.

Q. At the Board meeting, then, the Board took some steps, did they not, in ascertaining whether or not he had been guilty of any offense?

A. He was questioned.

Q. Did you take any other evidence or the testimony of any other parties relative to this affair?

A. Testimony of the Financial Agent.

Q. From the testimony produced there, what impression was made upon your mind—that he had been guilty of an offense or not?

A. The impression made upon my mind was that he had taken unwarranted authority in making out a car of cotton seed—partly from the State's cotton seed.

Q. Was that the extent of the charge against him—part of one car?

A. That was my understanding.

Q. Then you don't remember that it amounted to much more than that?

A. I don't remember the amount.

Q. You don't remember that it amounted to over \$1,000.00?

A. I don't remember the amount.

Q. Were such occurrences and such conduct as this on the part of Wardens, of ordinary occurrence?

A. It had never occurred before nor since to my knowledge.

Q. Then why didn't this thing make more impression upon your mind at the time?

A. I can't tell you why it didn't make more impression upon my mind than it did. I thought I thoroughly understood the situation at the time.

Q. I believe you answered a while ago, in substance, that you thought he exceeded his authority in the shipment of one car load of seed?

A. I have no recollection as to the amount, but I got the impression that the shipment of the State's seed was to make up a car that he had, to be replaced by seed that he bought.

Q. Do you know whether or not this ever was replaced?

A. I know it was not replaced by seed that he bought subsequently, because the whole matter was closed up then, and the money recovered, as I understood.

Q. I will ask you again, did you not state in substance that you thought that he exceeded his authority in the disposition of one car load of seed? Didn't you state that awhile ago in substance?

A. I can't remember the statement.

Q. I will ask you if you didn't state awhile ago that you thought that he had taken unwarranted authority in his disposition of the State's cotton seed in one car load?

A. I did.

Q. It didn't make the impression on your mind that he had stolen the cotton seed from the State?

A. No. And yet I understood that he had, without authority, taken the cotton seed, but I was under the impression that in good faith he intended to return it.

Q. Then you don't consider such conduct as stealing?

A. Possibly you might designate it with the broad term of stealing.

February, 8th, 1901.

J. C. MASSEY, recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Mr. Massey, you have been sworn and have testified before this Committee, have you not?

A. Yes, sir.

Q. I believe you have stated that you were Financial Agent of the Penitentiary during the fall and winter of 1898-9?

A. Yes, sir. I went in the 1st of April, 1897.

Q. While you were serving in this capacity was there a man by the name of Kline acting as Warden for the Penitentiary at some point?

A. Yes, sir.

Q. Was your attention ever called to the fact that there was a shortage in some of Mr. Kline's affairs in regard to some cotton seed?

A. Yes, sir.

Q. When was that?

A. I believe that was about the 1st of November, 1898.

Q. Do you mean it occurred about that time or that your attention was called to it about that time?

A. A little before that time. My attention was called to it about October, 1898.

Q. What information did you come in possession of and what steps did you take?

A. I found that he was shipping seed to Pine Bluff and selling them, and I consulted Governor Jones as to what I should do. He instructed me to go ahead and get testimony and see what I could find out in a quiet way. So I did and submitted the testimony to Governor Jones and the Board.

Q. Do you know whether or not he was ever called before the Board?

A. He was summoned to appear before the Board.

Q. Were you there when he was before the Board?

A. Yes, sir.

Q. Do you know whether or not the Board took any steps in the matter—discharged him or not?

A. They asked him some questions. He said that

he would get up some statement for them showing how he came by the seed, but he never did submit them that I know of. I got a check for one car-load that was turned over to me. There was some seven or eight car-loads.

Q. State the circumstances of your getting that check.

A. As I said, I found out he was shipping seed away and Governor Jones instructed me to find out about it. I did so. I went to the Arkansas Cotton Oil Company and asked for all the facts. They gave them. They turned over a bill of lading and afterwards they mailed me a check and I got Mr. Kline to endorse it and turned it over to the Treasurer.

Q. Who was the check made payable to?

A. E. A. Kline.

Q. Did he endorse the check without any protest or remonstrance?

A. Yes, sir. He did not remonstrate against it at all. I turned it in to the Treasurer and got his receipt for it.

Q. Where was he employed and at work?

A. His first year was at Noble Lake below Pine Bluff. His second year was at Wabbaseka and his third year was at Wrightsville.

Q. Where was he the year of this transaction?

A. The year that I discovered the shipment to Pine Bluff he was at Wrightsville.

Q. Then you say that the Pine Bluff firm agreed or did give you all information about the facts concerning the shipment of seed to that place?

A. They gave me a copy of the ledger account.

Q. What did that copy show?

A. I have it here.

Q. I will ask you if you were not served to-day with a subpoena *duces tecum* to bring certain papers?

A. Yes, sir.

Q. I will ask you to give a statement of what you learned at Pine Bluff?

A. I have the bill of lading for the car of seed and I have a letter in Mr. Kline's own handwriting that were also turned over to me. And I have a statement from the different camps of how much seed they should have received and how much they did receive for each of these three years. This statement here does not show the seed that was sold by wagons from Noble Lake about twelve or fifteen miles below Pine Bluff.

Q. What did you find the amount of the shipments to be that he had sent to Pine Bluff?

A. I will have to figure that up for you. I said eight cars awhile ago—it was nine cars received. The amount of the seed from Wrightsville and Wabbaseka together was \$1,135.43, as shown by a copy of the ledger account that the Arkansas Cotton Oil Company of Pine Bluff had with Mr. Kline, and in addition to that they sold by wagons from Noble Lake in 1896 total amount of seed, \$760.43. I be-

lieve that makes a total of \$1,895.86. On that amount we received back on that check \$107.85—that is what the last car brought. Now in Noble Lake in 1896 we should have received 151 tons of seed and the books at the office show we received only fifty-four tons.

Q. How did you arrive at this conclusion of how much seed you should have received?

A. We figured half a ton of seed to each bale of cotton—1,000 pounds of seed to a bale.

Q. Proceed.

A. Seven-twelfths of that was due the State. The State should have received eighty-seven tons—she received thirty-one tons. This is an estimate, however, that the clerk out there gave me from the books showing how many bales of cotton were received and how much seed we should have received and what we did receive. Three hundred and two bales of cotton were raised. Of this the State received seven-twelfths—there was due her eighty-seven tons of seed. This was the Noble Lake crop of 1896. She received thirty-one tons. That was the year before I went into office. The books of the Arkansas Cotton Oil Company show that he sold them by wagons \$760.43 worth of seed that year and received the cash for it. At the Altheimer camp, Wabba-seka we called it, the total number bales of cotton raised was three hundred and fifty-two, one-half to the State and one-half to the landlord—one hundred and seventy-six the State's part. Out of which she should have received eighty-eight tons of seed, she received fifty-three tons. We had

a contract down there with the landlord that for each free ginning we received half the seed. This statement does not take into account the amount of cotton seed that the State received for free ginning. Just how much that was I haven't any figures to show. Mr. Kline in his letter here of November 1st, 1898, says: "Enclosed please find bill of lading for the car of seed. Also report of seed bought. Have eight or ten cars of my own. Cars are hard to get. E. A. Kline."

Q. Did you conclude with that table there as to the shortage of seed?

A. Yes, sir.

Q. On that last table that you were dealing with, what do you find the total shortage of seed to be?

A. I haven't figured that. You can take this and figure it out there.

Q. Did you lay all these facts before the Board?

A. Just this statement as it is here—the same facts I have here before you gentlemen.

Q. The Board summoned Mr. Kline before them?

A. Yes, sir.

Q. Did he make any explanation of it that you know of?

A. He didn't for the Wrightsville seed, but he said this: "That he would get up a statement showing that he had bought some seed over at Wabbaseka." He never did file that statement, however.

Q. What disposition did the Board make of this matter?

A. They didn't do anything with it.

Q. Was he discharged?

A. No, sir: This was November 1, 1898, and he stayed there until March, 1899, until they gathered all the crops—until the contract terminated. It was the year we had so much cotton, and it was a very bad winter, and it was way in March before we finished up gathering.

Q. He never was discharged that you know of?

A. No, sir.

Q. And at least he worked on until when?

A. Until the crop was gathered. In March, I think it was (1899)—until the camp broke up. He didn't work any more then.

Q. I will ask you if Mr. Kline as Warden or as contractor didn't construct a telephone line down that way somewhere?

A. I don't know about that.

Q. He didn't while you were Financial Agent?

A. I don't know. I was Financial Agent in 1897 while he was at Wabbaseka, but I don't know about his building a telephone down there. I heard he built a telephone down there, but I know there was no sum of money turned in for it.

Q. You say you presented this matter to the Board in session?

A. Yes, sir. They called a session and summoned Mr. Kline.

Q. Did you ever have any talks with them individually about it?

A. I only talked with Governor Jones. He instructed me to go ahead and get up the facts in a quiet way. They summoned Mr. Kline before the Board. Some of his questions are here in his own handwriting.

Q. Some of his questions?

A. That he was going to ask Mr. Kline.

Q. You say you talked with Governor Jones personally about the matter?

A. Ycs, sir.

Q. Did he seem to be of the impression that the charges were well founded?

A. He didn't say. I said, "Governor, it seems pretty hard that we put a man into the Penitentiary for stealing a pig and small offenses, and that when a trusted agent of the State has stolen some \$1,500 and more of cotton seed, he goes free," and his only remark was that, "as it was inside of the family to say no more about it." I said no more about it—made no report of it to the grand jury. I didn't talk with any other parties about it. Possibly Mr. Hull and I may have talked some about it while the Board was in session.

E. T. McCONNELL, recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. You were Superintendent of the Penitentiary in 1898-9?

A. Yes, sir.

Q. Did you have a man in your employ as Warden during that time by the name of Kline?

A. Yes, sir. He was Warden at Fourche Camp at one time. Mr. Kline has been my Warden. I think your date is correct.

Q. Was your attention ever called to the fact that there was a shortage of cotton seed at some of the camps where Mr. Kline was Warden?

A. No, sir. Not in an official way.

Q. Was your attention called to it privately?

A. After the whole thing had transpired.

Q. Were you ever at a Board meeting when they were investigating this case of Mr. Kline as to whether or not he had stolen cotton seed from the State?

A. No, sir. Never was in a Board meeting when the matter was ever discussed.

Q. Do you know how Mr. Kline came to quit work for the Penitentiary?

A. Yes, sir.

Q. State how that was.

A. I discharged him. Told him I had no further use for him after this matter came up.

Q. Did you do that on your own motion, or were you authorized by the Board to do so?

A. On my own motion. I don't know; the Board may have made some suggestions.

Q. Do you remember when he was discharged?

A. No, sir. I could not tell you. He was discharged when that camp was abolished.

Q. Which camp was that?

A. Fourche.

Q. Do you remember what time of the year it was that he was discharged?

A. My recollection it would be in February—last of January or first of February.

Q. Was he not a Warden for the Penitentiary while the Legislature was in session here two years ago—in 1899?

A. Yes, sir. I suppose he was a portion of the time. I don't recollect the dates.

Q. And as soon as your attention was called to this transaction—the cotton seed deal—you discharged him?

A. No, sir. I discharged him as soon as the camp was abolished. There is things about this thing that the people don't understand. Take Mr. Kline, for instance. He had his 200 or more convicts and twenty or twenty-five trusties out; that contract had not been renewed—it was simply closing up business. To have put a new man in his place would have necessitated locking up those trusties and demoralizing everything. I abolished the camp and abolished him.

Q. You think it was two or three weeks after you were informed?

A. I never have been informed.

Q. When I say informed, I mean, have your attention called to it?

A. My attention has never been called to it by anybody connected with the Board. For some reason the Board and the Financial Agent kept that thing from me. I had a knowledge of it but never got it from them. I never had any information from the Board or Financial Agent. As soon as I got hold of it I then discussed the matter with members of the Board as to kicking him straight out or continuing. I advised that the camp was going to be closed and that he be continued until that time. People don't understand this Penitentiary business. They think you can change a Warden today or tomorrow and it is the same. A trusty in this camp will run off from this Warden and not that. While the Warden has not the power to make a trusty we allow them to consider they are a trusty by virtue of their friendship with the Warden.

Q. You didn't, as you express it, get on to it along in October or November?

A. I never knew anything about it until he was summoned before the Board.

Q. You had an intimation at the time he appeared before the Board?

A. I met him and he showed me his sommons. I asked him what it meant. He says, "I don't know any

more than you do." I came here and was notified it was a secret session and went off. I suppose, I don't know,—Mr. Kline was from my county—that is, used to live there—and all kindness towards the Board, they had some regard for my feelings in the matter and wanted to investigate and not let me know anything about it. I don't know what he done. I don't know whether he robbed the State of one cent—that is somebody else's business—it was not mine. If I had been asked to help investigate, then I might have known something about it. I was ignored in the matter and don't know anything about it.

M. D. L. COOK, having been duly sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Mr. Cook, the Auditor reports that the Penitentiary officials are several months behind in making their monthly reports to the Auditor's office. Will you please explain why that occurred?

A. My report, you mean?

Q. Yes. Any of the reports.

A. I don't know whether I have much explanation for that or not. The Clerk prepares these reports—gets them ready. He has failed to have them ready. They are all ready now, I believe. But his family was sick and away and he went to them and he came back home with his family and since then has been sick until he got up a few weeks ago.

Q. Is it the Clerk's place to prepare the reports?

A. Yes, sir.

Q. Who is the Clerk?

A. Mr. Moore. He was in bed with slow fever about eight or nine weeks. Prior to this his family had been down at Arkadelphia and he was kept down there with his family.

Q. You say they are all filed now?

A. They will be. He is finishing up his report. They will be filed tomorrow. We have a settlement each month with the State Treasurer. I take out so much money the first of each month to run that month. I draw, say \$10,000, and make a deposit for convenience in the bank and I check against that, and at the end of the month we have a complete settlement with the Treasurer.

Q. These settlements have been made regularly?

A. Yes, sir. By that way we keep our business shaped up. The other we didn't. But the Clerk has been in such shape he could not do it.

(BY MR. PATTON.)

Q. Do you know how far behind they are?

A. I guess about nine or ten months. I don't know exactly. They are all fixed up now. It is my duty to file those, I suppose, but the Clerk has been unable. The Clerk has had to use the vouchers in making up his report.

Q. Is it not a fact that the Superintendent and Financial Agent are each required to file a monthly report?

A. I think the Financial Agent is. I understand that

that is the law but it has not been strictly complied with on account of the misfortune of the Clerk. I will have them all in tomorrow.

February 9th, 1901.

W. A. BRIGHT, having been duly sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Mr. Bright, did you, during the year of 1899, enter into a contract with the authorities of the Arkansas State Penitentiary to construct a railroad, or for the hire of convicts, to construct a railroad in Washington County?

A. Yes, sir.

Q. I will ask you to look at this contract and state whether or not it is the one that you entered into?

A. Yes, sir.

Q. Did you ever execute a bond to the Penitentiary for the fulfillment of your contract, or for the payment of indebtedness for the hire of these convicts?

A. No, sir. There was no bond.

Q. Was a bond ever requested of you?

A. No, sir. I made them a special offer, and had certain securities to offer in lieu of a bond, at the time I made the proposition for the convicts.

Q. One of those securities, I believe, by reference to the contract, was a lien on the road-bed?

A. That was one.

Q. Was not this another—that you should give them

a lien on \$40,000 in notes executed by the citizens of Washington County?

A. Yes, sir.

Q. Did this cover all of the notes executed by the citizens of Washington County as subsidy notes?

A. Practically all, I think.

Q. Has any part of these notes ever been paid?

A. Yes, sir.

Q. I will ask you before that if you ever made a settlement with the State—paid them for the hire of those convicts?

A. Yes, sir. Settlement made with the State.

Q. On what terms?

A. Secured note, ten per cent interest, twelve months after date.

Q. Do you remember when you executed that note?

A. I did not execute the note at all. I had it done. The note was executed by other parties.

Q. Do you remember when the note was executed?

A. It was in January past. That is my recollection. The records will show.

Q. January, 1901?

A. Yes, sir. Sometime last month.

Q. Then you have reference to the new contract that the Penitentiary Board entered into for the completion of this railroad?

A. You asked awhile ago if the State had been paid

and I said that they had been paid by a secured note bearing ten per cent interest.

Q. Who executed that note?

A. William Kenefick, one of the parties, James H. McIlroy, of Fayetteville, and J. J. Baggett, of Prairie Grove.

Q. Do you not understand it that they entered into a new and independent contract with the Penitentiary Board and assumed the past indebtedness?

A. I made a contract with Mr. Kenefick and it took that shape in coming here. For some reason the Board preferred not to renew the old contract.

Q. You assigned all your right and interest to the parties named?

A. Yes, sir.

Q. I believe you say that this lien on the notes in Washington County practically covered all the notes executed by the citizens of that county?

A. Yes, sir.

Q. I will ask you if any part of these notes has ever been paid?

A. Yes, sir.

Q. How much?

A. In work and some money there has been perhaps between \$6,000 and \$7,000 paid.

Q. Did you ever turn this or any part over to the State?

A. No, sir.

Q. Did the Penitentiary authorities ever demand of you that you, under the authority of that lien held by them, should turn over any part of this?

A. No, sir. They understood and were advised of just what I was doing. The money that was being received there was going into the road on which they were holding a lien. The notes were conditioned on the road being built so far, certain progress being made within a stipulated time. As a matter of fact, the State in this case is in default. They failed to furnish the men they agreed to. If they had furnished the men their payments would have been made promptly. Instead of furnishing 100 men they only furnished forty or fifty, and it took longer to do the work, so that default was made in time.

Q. I see you are named as party of the second part—you individually?

A. Yes, sir.

Q. I will ask you if you were connected with any one else—if you were associated with any one else in this contract?

A. No, sir. No one else in the contract.

Q. Did any one else, aside from yourself, have or own any interest in it?

A. Interest in the road? Yes.

Q. Who were those parties?

A. John M. Pitman, of Prescott, Arkansas; Mr. Baggett had some stock; Mr. F. P. Hall, of Fayetteville, had

some stock in the road, and John Edmonson, of Boonesboro, had some.

Q. Any one else?

A. No. Except some nominal amount.

Q. Was at any future time, any one else to have any interest in this road?

A. No, sir.

Q. At the time this new contract was interred into, was the amount owed the State by you due?

A. Yes. It depends on this: They had forfeited their contract and failed to furnish the men. It required a certain number of men to get the road built a certain number of miles. I failed to build the road as rapidly as I agreed to under the contract with the citizens of Washington County, but I waived any right I might have on account of not having the contract carried out by the State and secured them for the amount.

Q. Who was to furnish provisions, food and clothes for the convicts according to this contract?

A. The State of Arkansas.

Q. Who was to furnish the stockade?

A. I was.

Q. Where did you get the material for constructing this stockade?

A. Various stockades built along the line, except one.

Q. What was that one?

A. Built out of plank and lumber.

Q. Where did you get the material for that?

A. Mr. E. T. McConnell, at Clarksville.

Q. Did you buy that from Mr. McConnell?

A. Yes, sir.

Q. Have you settled with Mr. McConnell for that?

A. Yes, sir.

Q. In what way did you settle?

A. Paid him the money for it at the time I got it.

Q. You were in Washington County, weren't you, a part of the time while this work was going on?

A. Most all of the time.

Q. Were you reasonably conversant with the state of affairs there as to whether or not there was capital that would have constructed this road on, after you had ceased operation?

A. You mean if I had turned it over? Made them a present of what I had?

Q. No. I mean, did you ever receive any proposition there from men who wanted to buy you out and would pay you what your stock was worth?

A. No, sir. I never received any proposition that involved paying what it was worth nor anything like what it cost. Neither do I believe any local capitalists there would have put their money in and paid for it. There was a good deal of talk about it. I tried for awhile to make a deal.

Q. Did you ever receive any proposition from any local or foreign capital as to your turning over your work and your stock there?

A. I don't regard the dickering I had there with Mr. McIlroy and others to take charge of the work. You might call it a proposition, but it was like making them a present of what I had there.

Q. Did you ever receive any proposition that was as liberal as the one you accepted with Kenefick?

A. I never received one that meant absolutely constructing the road as I had undertaken to do it, and doing it rapidly without any question.

Q. Then your attention was never called to the fact that capital could be easily secured to complete that road after having paid you reasonably for your work?

A. There never was a time but what I could have closed up a deal that would have paid what debts we owed and have gone on in a general way with the work.

Q. Wasn't the proposition submitted to you by Mr. Kenefick the only reasonable one that was ever made to you?

A. No, sir.

Q. Wasn't it the best ever submitted to you?

A. Not the best from a financial standpoint. It was the only one I could count on in pushing the road through quickly. There were others that would net more money to me in a slower way.

(BY MR. WILLIAMS.)

Q. Have you ever had any other contracts from the State beside this?

A. No, sir.

Q. In the securing of this contract, how was it brought about? Did you enter into competitive bidding for the contract?

A. In the first place?

Q. Yes?

A. No.

Q. Was your offer made privately to the Board or to whom?

A. Made to the Board.

Q. When they were sitting?

A. Yes, sir. In regular session.

Q. Were there any other competitors at the time for the same labor?

A. No, sir.

Q. Had there been shortly before?

A. That I don't know.

(BY MR. PATTON.)

Q. You think, then, had the State complied with the contract on her part that you could have made her whole before you ceased operations?

A. Yes, sir. No doubt about it. Not only that but we would have had at least twenty miles of road in operation before this time.

Q. Then you consider that the Penitentiary management was at fault in not furnishing the men as agreed to?

A. I think we ought to have had the men instead of

somebody else. I think it is the only contract that the State has that is worth a darn.

(BY MR. WILLIAMS.)

Q. You say a portion of that was paid in labor and some in money up to about \$6,000 to \$7,000? What portion was paid in labor and what in money?

A. Assuming that there was \$6,000 paid, there was about two-thirds or three-fourths of that labor. The other went back into ties and timber on which the State had a lien. We had cross-ties enough there to have paid every dollar we owed the State.

(BY MR. PATTON.)

Q. What business are you engaged in now?

A. Life insurance business.

Q. What business were you engaged in prior to this contract?

A. I was in the life insurance business at that time, and have been in the railroad business off and on ten or twelve years.

Q. You have been a contractor before then?

A. Yes, sir.

Q. What contract, and of what proportions did you ever enter into before in building railroads?

A. I built the Houston & Central Arkansas Railroad, 215 miles long. I was connected with the Arkansas Construction Company that did work on the Choctaw & Memphis, and out twelve miles from Pine Bluff.

Q. When were you connected with the Arkansas Construction Company?

A. I believe they organized in 1899. And that company has never been disbanded.

Q. Are you still connected with it?

A. Yes, sir. We are out of business, however.

Q. Do you know who the stockholders in that Arkansas Construction Company are?

A. Yes, sir.

Q. Will you state?

A. W. L. Reeves, M. D. L. Cook and James A. Watkins.

Q. Did they ever make a contract with the Penitentiary authorities?

A. No, sir. They never did, I don't think. The contract was made by W. L. Reeves and transferred to the Company.

Q. What contract was that?

A. The first Penitentiary contract that was ever made to work convicts on a railroad—200 men.

Q. Where were they worked?

A. On the Choctaw & Memphis, and on a little road built out twelve miles from Pine Bluff.

Q. The men you named as stockholders now were stockholders in that Company then were they?

A. Yes, sir.

JUDGE FRANK HILL, recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. I believe you have been sworn and have testified before?

A. I have.

Q. Is it a fact that you, for a time at least, have out been boarding at the Penitentiary?

A. I have been rooming there.

Q. But didn't take your meals there?

A. Occasionally I took my meals there.

Q. How often did you take your meals there—that is, relatively speaking?

A. I kept no record of it.

Q. Do you take meals there most of your time, or have you for the last few months?

A. I have been out of the city most of the time.

Q. When you are in the city, then, do you take your meals there most of the time?

A. No, sir. When I am in the city I take my meals most of the time elsewhere.

Q. You room there and sleep there?

A. Yes, sir.

Q. Where do you take your meals most of the time?

A. At the eating houses in town here.

Q. How far is it from the Penitentiary to the eating houses where you take your meals?

A. It is about a mile. Right within a few blocks of my office.

Q. Then, most of the time, you get up of mornings and come down town to your breakfast?

A. I perhaps eat breakfast there oftener than any other meal, but a good deal of the time I eat breakfast elsewhere.

Q. Do you eat breakfast there more than elsewhere?

A. When I am in the city, yes.

Q. Do you eat dinner there oftener when you are in the city than elsewhere?

A. No, sir. Not nearly so often.

Q. Did you take supper there as often when in the city as other places?

A. I think not. Though I have kept no record of it.

Q. How long have you been rooming there?

A. I really can't remember the date, but since about the middle of the summer of 1899. When in the city, of course.

(BY MR. WILLIAMS.)

Q. How came you to take your room out there?

A. The Superintendent asked me.

Q. Superintendent who?

A. McConnell asked me to take one of the unoccupied rooms—there were perhaps three or four unoccupied rooms there—if I saw fit to furnish it and sleep there. I did so, partly because it was one of the coolest places I could find in the heat of the summer when I went there, and partly in the interest of the Penitentiary.

Q. In what way was it to the interest of the Penitentiary?

A. I went from there to the camps. I visited the camps of the Penitentiary and spent a good deal of time at the time the machinery was being put up and work done on the manufacturing plant in the Penitentiary.

Q. You mean at the new Penitentiary?

A. No, sir. That is some time ago.

(BY MR. PATTON.)

Q. What particular office or function did you exercise more than any other member of the Penitentiary Board?

A. I was appointed frequently to represent the Board.

Q. To represent the Board in what way?

A. In the way of looking after and inspecting, not inspecting perhaps machinery, but to see that the machinery went in in a way that would be profitable to the State.

Q. Was that not the duty of the Superintendent?

A. Yes, sir. But I was appointed by the Board to go and act with the Superintendent.

Q. Did the Board ever authorize you to take rooms there or suggest that you should?

A. No, sir. The Board had nothing to do with that. I simply, at the suggestion of the Superintendent, furnished an unoccupied room there in company with the physician, his family being, I think, in Lawrence County

and mine in Washington County. We roomed there together.

Q. You say that it was because you went from over there to the camps. Was it any more convenient to go from over there to the camps than it would be from up town to the camps?

A. To the brick-yard camp, yes.

Q. How was that?

A. I drove frequently to the camp, and occasionally went out at the time the men commenced working in the morning.

Q. Would it have been any more inconvenient to go from a boarding place down town to the Penitentiary so you could get to those camps than it would have been for you to come from the Penitentiary down town to get your meals?

A. I can scarcely say as to the inconvenience. I would, of course, have had to go from down town to the Penitentiary and drive from there out as I did to the camp, but as to the inconvenience of going from the Penitentiary to the eating places down town it was simply coming direct to my office almost.

Q. Then you did have to come down town each day for your meals or to go to your office at least?

A. Yes, sir.

Q. How often did you visit these camps?

A. I can't say. I visited the brick-yard camp, which is about two and a half miles southwest of the old site of

the Penitentiary, where is also situated the new Penitentiary, a number of times.

Q. Did you visit this or any other camp every day?

A. No, sir.

Q. Well, then, would not the inconvenience of coming from the Penitentiary down town for your meals every day be greater than going from the boarding house down town to visit these camps occasionally?

A. As I have explained to you, the inconvenience of coming from my room in the Penitentiary office building to restaurants down town was no inconvenience at all because I had to come direct to my office; while the inconvenience of going from any place in the city to the power plant within the Penitentiary walls would be perhaps greater than going from the Penitentiary office building, as would also the inconvenience of going from almost any other place in the city to the brick-yard camp or new Penitentiary.

Q. You say it was no great inconvenience to come down town each day for your meals in as much as you had to come to your office each day? But wasn't it an inconvenience to go clear back to the Penitentiary to your room at night?

A. About the same inconvenience that the majority of the people in Little Rock have in going from the business part of the city out to their homes.

Q. Then the inconvenience of going from your place of business to your room at night was not so great?

A. Not a serious inconvenience because I usually went on a car.

Q. Then why would it have been a serious inconvenience for you to go from your place of business down town to the Penitentiary in order to visit these camps?

A. It would not have been a very serious inconvenience.

Q. Did you not state that the principal reason you took your room at the Penitentiary was because of the convenience it offered you in visiting these camps?

A. I did not, as you well know. I stated the principal reason was because the room was cooler.

Q. I will ask you if you did not state that that was one reason you took your room at that place?

A. I did. And the camp oftenest requiring attention was the camp within the walls—the Penitentiary itself, including the power house.

Q. What is board down town at the places you usually board at worth per month?

A. I have paid for each meal separately. I have made no estimate of the amount paid per month.

Q. Have you ever taken regular board at any place since you have been here?

A. I have.

Q. Do you remember what you have paid on different occasions for board in this city?

A. I have paid at the rate of \$20 per month for the time actually boarded and occupying the room.

(BY MR. WILLIAMS.)

Q. What were your duties in going out to this brick-yard that you have mentioned? For what purpose did you go?

A. I made perhaps more trips out there to bring about better treatment for the convicts than for any other one thing.

Q. Were they being worked then by the State or by somebody else?

A. By the State.

Q. Was there any complaint about their ill-treatment?

A. No, sir. I thought it was my duty to look after them without any complaint being made.

Q. Did you find they were well treated?

A. They were worked longer hours than I thought they ought to be.

Q. Did you make any complaint on that account?

A. I don't know of any specific complaint. I went and made inquiry into the matter.

Q. You say you did not make any specific complaint? Did you make any complaint?

A. I misunderstood the question entirely. I thought you asked, did I hear any specific complaint and my answer was intended to be, I heard no specific complaint. I made an explanation to the Board and offered a resolution directing the Superintendent to work the convicts under contracts ten hours a day and no more.

Q. Was this only on one occasion that you made this complaint?

A. No.

Q. How many others did you make?

A. One. I offered a resolution, I think, early in 1899, to the same effect.

Q. Was that in 1899 the first or second one?

A. First.

Q. When was the second one made?

A. In the summer of 1900, but I can't remember. It is a matter of record.

(BY MR. PATTON.)

Q. How else did you put in your time out there aside from trying to secure better treatment for the convicts in reducing the number of hours work?

A. I made several trips there in regard to locating a site for the new Penitentiary, and later on, selecting a location for the several buildings and the walls, and still later in urging the contractors to comply with the specifications of the building.

Q. Was the authority of selecting a site for the new Penitentiary delegated to you?

A. Yes, sir. The authority of selecting a site for the walls and buildings and also selecting—all this in company with the Superintendent, however—the lot on which the new Penitentiary is built. This lot being selected out of a forty-acre tract.

Q. Then the Board accepted your recommendation as to the site of the Penitentiary?

A. Yes, sir. After the Board had selected the particular forty acres in which it was to be located and the price to be paid per acre.

Q. How much land did the Board buy?

A. Practically fifteen acres. May vary a few square feet.

Q. You say that you selected the site out of forty acres?

A. In company with the Superintendent of the Penitentiary.

Q. Who did this forty acres belong to? Did it all belong to one man or one company?

A. My recollection is that the deed was made by W. W. Dickinson.

Q. Did the forty acres all belong to one man?

A. I think it did. And my doubt is as to whether it belonged to W. W. Dickinson or the Arkansas Brick Manufacturing Company, of which Dickinson was manager. I think it was Dickinson individually.

Q. You say that you introduced a resolution there in the Board meeting to reduce the number of hours of labor to ten? How long had they been working prior to this time?

A. I estimated the time at about thirteen hours.

(BY MR. WILLIAMS.)

Q. How did you arrive at your estimate?

A. By going out there at day light in the morning when the men went to work and being there late at night.

(BY MR. PATTON.)

Q. You say you have spent a good deal of time out there altogether in the discharge of your duties?

A. I don't think I said anything of the kind. I said I made a number of trips out there.

Q. Then you didn't spend a great deal of time out there?

A. I didn't spend much time there on each trip, nor on any one trip.

Q. Did you or did you not spend much time in this particular work—that is as regards the Penitentiary—in the Penitentiary business?

A. I can scarcely make an estimate of time spent actually on the ground, but made trips there on a good many different days.

Q. I mean in your supervision over the Penitentiary management or what you may call it? Did you spend a great part of your time or not?

A. A comparatively large portion of the time that I was in the city, yes.

Q. Then you were in your office a comparatively small portion of your time when in the city, weren't you?

A. I don't remember that I ever missed a day from

my office when in the city. I usually went to my office and to the Penitentiary both—or to some camp.

Q. I will ask you if you spent a comparatively large part of your time while in the city in the service of the Penitentiary? Must it not naturally follow that you spent a small part of your time, comparatively, in your office?

A. I don't mean to convey by that answer more than half of it. I mean to convey the idea that on a good many days I visited the Penitentiary camp for one reason and another, and that on every day in which I was in the city I was at my office at some time.

Q. When you say that comparatively large part of your time, you don't mean more than half of your time, did you state?

A. I did.

Q. What do you mean, then, by a comparatively large part of your time? Less than half?

A. Perhaps was occupied so less than half the time.

Q. When you say a large part of your time comparatively, you mean less than half your time?

A. On perhaps more than half the days in which I have been in the city I have been to some portion or other of the Penitentiary work. But I don't mean by this that the whole day was occupied.

Q. I will ask you again, whether you did or whether you did not state that when you said a large part of your time comparatively, you didn't mean more than half of your time? Did you or did you not state that?

A. I think I did.

Q. Then, when you speak of a large part of your time comparatively, do you mean less than half of your time?

A. Less than half of the time, yes. Less than half of the time because, as I explained to you, on every day in which I went to any part of the Penitentiary work I also visited my office.

ALEX C. HULL, having been sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. You have testified before this Committee before, haven't you?

A. Yes, sir.

Q. How many times have you been subpoenaed?

A. I have been subpoenaed this is the third time, I believe.

Q. Are you not a member of the Penitentiary Board, the management of which is under investigation now?

A. Yes, sir.

Q. Were you here yesterday afternoon on notice?

A. Yes, sir.

Q. Did you remain and testify?

A. No, sir. I went away, after waiting here half an hour.

Q. Did you speak to any member of the Committee about leaving?

A. I spoke to Mr. Williams. He said they had not found Mr. Buckner. I waited awhile and you had gone and I supposed they were not going to do anything.

Q. Did you ever come into the Committee room and see whether I was in here?

A. I was at the door two or three times during my stay here. And not having been subpoenaed I supposed it was not an important meeting and I just went home. My folks were quite sick.

Q. Didn't you tell this Committee that a simple notification would be sufficient?

A. Yes, sir. And I appeared at the time specified—immediately after the House adjourned.

Q. Were you Secretary of the Penitentiary Board when the site of the new Penitentiary was purchased?

A. Yes, sir.

Q. Who did you buy that property from?

A. W. W. Dickinson, or the Arkansas Manufacturing Company—all the same.

Q. How much land did you buy?

A. My recollection now fifteen acres.

Q. How much did you pay per acre?

A. I think we paid \$300 an acre. I am not sure, but I think that is it.

Q. How much did you pay for the tract?

A. I don't remember the amount. I didn't have much to do with the contract. It was made by the other members of the Board.

Q. Do you know what members of the Board did negotiate with the grantor?

A. No, sir. There was some talk in the Board meeting and after that my recollection is that Judge Hill and Dickinson probably discussed the matter privately. It came then before the Board and was adopted.

Q. Do you know what reason was given for the selection of this particular site?

A. No. We had to move the Penitentiary and that was a good site.

Q. Do you remember whether or not the Board ever negotiated with other property owners in that vicinity, or in any other, as to what a site could be purchased for?

A. No. I don't think they did further than to negotiate to some extent, or discuss the matter to some extent, with a party across the river for a considerable tract of land for Penitentiary and farming together. That was not advisable and we did not take that.

Q. How far is this new site from the city and in what direction?

A. It is southwest from here, and I suppose three and a half miles.

Q. What is the nature, or topography of the land on which the site is located?

A. Located right on the crown of a hill—considerable hill.

Q. You say it is a considerable hill?

A. Quite a hill. Makes a very good site.

Q. Does the site cover the area of the whole hill?

A. I don't know. I never saw the lines. The site extends over the slope of the hill.

Q. Do you know whether or not you ever negotiated with men who owned adjacent land there as to purchasing it for the State?

A. Not that I know of. I had no talk with anybody.

Q. Did you advertise for bids?

A. No, sir.

Q. Do you know how long Mr. Dickinson or the Brick Manufacturing Company, had owned that?

A. No, sir.

Q. Then you are not informed that they had owned it but a short time?

A. No, sir. I don't know anything about that.

Q. You never made any inquiry as to how long they owned it?

A. No, sir. I never knew they had any extra land aside from their plant until this came up.

Q. You agreed to the purchase of this property for a site?

A. Yes, sir. At least I signed the contract.

Q. And why did you never inquire into what the price of adjacent land was, and whether or not land could be had in that vicinity for a less price?

A. There was a special committee appointed to look that up. Judge Hill and Mr. McConnell were on that committee. It was not my duty on the Board to look after it.

I suppose it was my duty but we had let that to another committee.

Q. You didn't question this special committee about this matter?

A. No, sir. I took their report, and I supposed they knew more about it than I would if I had gone and looked. I approved it because I thought it was the best site that could be gotten near the city.

Q. Did the Penitentiary ever enter into a contract with this Brick Manufacturing Company for the hire of convicts in their brick yard?

A. Yes, sir.

Q. At what rate were they hired?

A. Fifty cents a day.

Q. Is there, do you understand, any statute to regulate the price for the hire of convicts?

A. I don't know of any.

Q. Fifty cents is the customary price?

A. Yes, sir. Since I have been on the Board.

Q. How far is this Brick Manufacturing Company's plant from the State Penitentiary?

A. Three hundred or 400 yards of the property—at the foot of the hill on which the Penitentiary is located.

Q. Did you not also enter into a contract with this Company that they should furnish brick for the erection of the new building?

A. Yes, sir.

Q. What price were you to pay for brick?

A. Six dollars a thousand.

Q. Compared to the ordinary price of brick in this city—the market price—was that more or less?

A. We thought it was less.

Q. What is your information as to the price of brick per thousand?

A. We investigated that some. Prices we got then was from \$8.00 to \$12.00 a thousand for brick laid down.

Q. Was that contract that they should furnish brick not dependent upon the contract to buy the present site?

A. Not that I know of.

Q. Was the contract to buy the site dependent upon the contract to furnish brick?

A. I don't know that either. The contracts were let at different times. I don't know whether they depended on each other or not.

Q. I will ask you whether or not that is one of the contracts entered into between the Brick Company and the Penitentiary?

A. Yes, sir. That is the original contract. I think it was changed after that some; at least there was fifteen acres bought instead of ten and the price was made different.

Q. What is the form of that contract? Is that not a letter addressed by the Company to the Penitentiary and signed and afterwards approved as a contract?

A. Yes, sir. A record made of it. That is the application and the acceptance of it by the Board.

Little Rock, Ark., Nov. 24, 1899.

The Honorable Board of Penitentiary Commissioners,
City.

Gentlemen:—We propose to sell you about ten acres of our land on the hill, adjoining our brick yard, at such point as you may select, for \$500.00, with the privilege of using our spur track for loading and unloading material or goods. In case the selection is made so that it is necessary to make a street through our land to the turnpike, then you are to pay for such street, at the above rate per acre.

Also agree to furnish one kiln of brick of four hundred and fifty thousand common building brick at \$6.00 per thousand, and face brick at \$10.00 per thousand delivered, and as many more at same price, as are necessary to complete Penitentiary building, and you agree to buy from us whatever brick are necessary to complete said buildings at price stated.

Yours truly,

ARKANSAS BRICK & MANUFACTURING CO.

Signed: W. W. DICKINSON,
President.

Accepted, with option of eight to ten acres by Board.

Signed: DAN'L W. JONES, Governor,
and Acting President Board,

{ SEAL. } ALEX C. HULL, Secretary of State,
and Secretary Penitentiary Board.

Attest: ALEX C. HULL, Secretary of State.

A. Yes. They are together. I had forgotten that point. Signed by Mr. Dickinson as President of the Company, and then by the President and Secretary of the Board.

Q. I will ask you whether or not this is another contract—an amended form of that?

A. Yes, sir,

Little Rock, Ark., March 28, 1900.

To the Honorable Arkansas State Penitentiary Board,
City.

Gentlemen:—We submit the following proposition for your consideration:

We will furnish a Superintendent to look after the building of the Penitentiary, and will lay the brick in the walls for \$2.50 per thousand, wall measurement, you to furnish brick under contract already existing with us, and all material and other labor. We to lay the brick only.

Yours truly,

ARKANSAS BRICK & MANUFACTURING CO.

W. W. DICKINSON,

President.

Accepted this March 30, 1900.

DAN'L W. JONES,

Governor and President.

ALEX C. HULL,

Secretary and Secretary of State.

FRANK HILL,

Commissioner of Mines, Manufacture and Agriculture,

E. T. McCONNELL,

Superintendent Penitentiary.

M. D. L. COOK,

Financial Agent Penitentiary.

Attest: ALEX C. HULL, Secretary of State.

Q. According to this main contract here this second proposition submitted to the Penitentiary was to furnish the brick and they were to do the labor—that is, lay them in the wall at \$2.50 per thousand?

A. Yes, sir.

Q. How is this work being done? By convict labor or a lease?

A. A portion of it done by the convicts—that is,

what they call the waiters, the fellows that carry the hod. The brick laying is done by skilled workmen hired by the Company. I think we had only one skilled brick mason in the Penitentiary at the time.

Q. Have the convicts never done any brick laying work?

A. Not that I know of, unless it would be filling in Common work anybody could do.

Q. At the time you entered into this first contract that they were to furnish you the brick only, how did you intend to lay them?

A. That was a question we had not decided. I had no plan in my mind, I don't know what the Board had. It was a question that was to be settled when it came up—when they got ready to build.

Q. I will ask you if this is not another amended form of proposition submitted?

A. Yes, sir.

Little Rock, Ark., June 2, 1900.

To the Honorable Penitentiary Board, City.

Gentlemen:—As you have made changes in your plans for constructing the Penitentiary walls and buildings, and have requested us to submit to you a proposition to build the walls and complete all the buildings, as per your revised plans herewith submitted, which includes all of the buildings and the walls, we are pleased to submit the following:

We will complete the walls and buildings, as per plans and specifications, (specifications of buildings to be submitted later) furnish the brick, laying them only, for the sum of \$8.50 per thousand, wall measurement. You to furnish all material and labor, etc., we to lay and furnish the

brick only. This to apply to common brick only. Where the buildings and walls are faced with pressed brick, of a reasonable uniform color, the price is to be \$12.50 per thousand. Measurement to be taken on pressed brick, face only.

It is understood that wall measurement shall be: That buttresses shall be measured on all sides for width, and by their projection at base. That cornices shall be measured solid, taking their height by their greatest projection. That all openings exceeding one hundred square feet, shall be deducted, and that seven and one-half brick to each superficial foot of four inches, or one brick wall shall be measured, *i. e.*, twenty-two and a half brick shall constitute a cubic foot.

This contract to apply to all work that has been done up to this time, and that may hereafter be done.

Settlement to be made every thirty days.

Yours truly,

ARKANSAS BRICK & MANUFACTURING COMPANY,
W. W. DICKINSON,
President.

Accepted and approved by the Board, this June 2nd, 1900.

DAN'L W. JONES,

Governor and President of Board,
FRANK HILL,



Commissioner Mines, Manufacture and Agriculture,

ALEX C. HULL,

Secretary of State and Secretary Board.

Attest: ALEX C. HULL, Secretary of State.

Signed in duplicate.

Q. What changes did you make in the plans and specifications that necessitated this new submission of a contract?

A. The changes made, the first idea was to build a plain wall like the old Penitentiary wall out here, but the Board got an idea that they wanted to make a pilastered

wall, more ornamental and more creditable, and the Board then had the architect draw up plans in keeping with that decision, and changed the condition of the contract to some extent, in that it was more difficult work, more difficult masonry, and required possibly more pressed brick. That caused a change in the contract, because we changed the plan of the building—the style of the building. The original plan was to duplicate the old Penitentiary buildings and all, and then we decided this change would be better, so we made it.

Q. You say you originally were to pay a certain price for the brick? Where was that price to apply, at the brick yard or delivered?

A. Delivered on the ground is my understanding. The difference in the brick contracts is not in the pressed brick but in the measurements made, as I understand. It would require a different kind of measurement because of the projections. More skilled labor and consequently more trouble to build.

Q. Who do you understand was to furnish the other material, mortar, lumber and cement?

A. The State furnished that, as well as all the hardware and such as that.

Q. Then they got \$2.50 for simply laying the brick, aside from the work of the waiters or hod-carriers, as you call them?

A. Yes, sir. Two dollars and fifty cents for putting the brick in the wall. Those hod carriers under the con-

tract belonged to the Company and they used them as far as they could.

Q. Did you ever advertise for bids for material or brick to be furnished in the construction of the new Penitentiary?

A. We did not.

Q. Did you ever consult with other contractors or brick manufacturing companies as to their prices?

A. I never did. I don't know whether any of the Board did or not.

Q. You never tried to ascertain from other members of the Board as to whether or not they did?

A. No, sir. I don't remember that I did. Of course we discussed. I know there was an investigation as to the price of brick, but I don't know whether it was with other brick manufacturers or not.

Q. Do you remember whether or not the sub-committee said this was cheaper than brick could be gotten elsewhere?

A. Yes, sir. That was their report.

Q. Did you ever hear them make any comparisons with any other firms?

A. No, sir.

Q. Was this the first contract you had ever entered into with Mr. Dickinson or the Arkansas Brick & Manufacturing Company?

A. No, sir. I think they had a short contract for

the hire of convicts before this—that is, a smaller contract.

Q. I will ask you whether not this is the contract you entered into?

A. Yes, sir. For forty convicts.

Q. For how long a period of time was this contract made?

A. A period of two years.

Q. Dated from what time?

A. Beginning the 1st day of January, 1899, and ending on the 31st day of December, 1900.

Q. Do you remember the length of time of various contracts? That is, the terms in which the contract should remain in force with different companies or planters?

A. No, sir. Possibly I can tell some of them.

Q. What is the longest term of contract that you have ever entered into to the best of your recollection?

A. I think about ten years, possibly,

Q. What contract was that?

A. That is the contract, I think, with Dickinson. Seems to me it was ten, may be it was eight. Then we had one with Little—farming contract—six or eight.

Q. The Dickinson contract. What was the nature of that?

A. Hire of convicts.

Q. For what purpose?

A. Work in the brick yard.

Q. What was the nature of the Little contract?

A. Farming.

Q. Do you remember any other contract as long a term as that?

A. No, sir. I can't think of any now.

Q. Do you remember of any for five years?

A. No, sir. I don't remember the length of the other contracts.

Q. Do you frequently make them for as long a term as five years?

A. Yes, sir. I think some farming contracts as long as that. I can't remember. I was on thirteen Boards and didn't try to retain those things in my mind.

Q. Is it not a fact that most all the convicts are out on a lease or contract for a period of more than two years.

A. The most of them are.

(BY MR. WILLIAMS.)

Q. Have you any idea of what unoccupied land out about where this Penitentiary was bought is worth per acre?

A. No. I don't think that I had at that time.

Q. Have you now?

A. Yes, sir. It has been brought to my notice that prices were being offered out there for it.

Q. What are the prices?

A. One man out there refused \$500 an acre for his land.

Q. What are lands as a rule worth? What is the

prevailing price per acre for unincumbered lands out there?

A. I don't know about that. I have not made any inquiry. Prices have enhanced in the last year or so.

Q. I mean more particularly at the time this land was bought?

A. It was being held at from \$300 to \$500 an acre at the time this land was bought.

(BY SENATOR BUCKNER.)

Q. Was the Board or was it not guided to some extent in selecting the site for the Penitentiary, by the idea that it would be close to where the brick was manufactured and you would save some expense in hauling?

A. Yes, sir. And another idea would be working the convicts in the factory which would be better than working them on the farm.

Q. There is a brick factory there? Was the chair factory in existence at the time?

A. Yes, sir. It was originally in the old Penitentiary and moved out there. The idea was to get into the manufacturing business as much as possible with the convicts and concentrate them.

(BY MR. PATTON.)

Q. Do you know who this was that refused \$500 per acre.

A. No, sir. I heard his name but I have forgotten it.

Q. Do you know where the land was situated?

A. Yes, sir. The land right across the pike from the Penitentiary—north of the Penitentiary.

Q. Is a great outlay of capital required in manufacturing brick aside from the real estate and the labor?

A. I would judge so. I don't know from experience, but to look at the machinery they have there, I judge it would be rather expensive machinery.

Q. Is very expensive machinery necessary for making ordinary brick?

A. Yes, sir. They have machinery for them. They don't make a common brick the way I used to see it made in the country. It is all made by machinery.

Q. Is not this process of manufacturing brick by machinery cheaper than the old-fashioned way?

A. I suppose it is cheaper after they get the plant installed.

Q. They do employ a great many men in brick yards here?

A. Yes, sir.

February 14th, 1901.

DR. N. B. BEAKLEY, having been sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name and residence?

A. N. B. Beakley, England, Ark.

Q. Did you ever enter into a contract with the State for the hire of convicts?

A. Yes, sir.

Q. On how many occasions, or how many contracts have you entered into with the State?

A. Three.

Q. When did you make your first one?

A. About three years ago.

Q. I will ask you if this is one of them?

A. That is correct.

Q. Is that the first one?

A. No, sir. This is the second contract. The first contract was made before this.

Q. When did you make your last contract with the State?

A. Something over a year ago.

Q. Was it in January, 1899?

A. Yes, sir.

Q. That was for the hire of convicts, was it?

A. No, sir. The last contract was made to lease the farm for five years and for the hire of convicts also.

Q. How long was the terms of that contract?

A. Five years. That is, until December 31st, 1903.

Q. Is that contract still in force and operation?

A. Yes, sir.

Q. Has it ever been amended or changed, or have the parties to it ever been changed?

A. No, sir. The only difference is the contract was made with me especially and after the contract was made I

transferred all the property—that is, made it into a joint stock company.

Q. You transferred your property then to a joint stock company?

A. Yes, sir.

Q. What was that company known as.

A. Clear Lake Farming Company.

Q. Was it incorporated?

A. Yes, sir.

Q. Who were the stock-holders in that?

A. I own all the stock except two shares. I gave to a couple of friends of mine, who are associated with me in another company, two shares just so they could hold the office. I went into debt for this land and I expected at the time to have to borrow money and I put it into a joint stock company to use the stock, but I didn't have to use it.

Q. You never have been forced to dispose of part of it?

A. No, sir. I had parties to carry me.

Q. It has been rather a paying investment?

A. Of course I never got out of it what I paid in. I had to buy a good part of it on credit. At the time I expected to have to sell some of the stock. It is all being carried now by one party. That was my reason for putting it into a joint stock company.

Q. You say, I believe, that the only shares owned by other parties were these two gentlemen who own nominal shares for the purpose of incorporation?

A. Yes, sir.

Q. Have you never intimated that any one else owned stock in this?

A. I don't see how I could. I always owned the stock. Mr. Lock is the Secretary and Treasurer and Mr. Hicks the Vice-President.

Q. When you owned the entire stock what was the advantage of incorporation?

A. None except what I told you. Mr. Thompson here was carrying \$7,000 for me and another party carrying \$15,000

Q. The property could have been used as good collateral?

A. Yes, sir. But not as easy.

Q. How long, did you say, that this was to remain in force?

A. Five years from date—to the 31st day of December, 1903, not exactly five years.

Q. How much per day were you to pay for the hire of convicts?

A. Fifty cents.

Q. Then did you not have some lands to be cleared?

A. Yes, sir.

Q. How much land was there to be cleared?

A. There was no certain amount. I was to pay them \$7.50 an acre and furnish the material to fence it with for all the land they cleared.

Q. Did you appear before the Board and secure this contract yourself, in person?

A. Yes, sir.

Q. Did you have any one on the outside assisting you in this matter?

A. No, sir. None, except, just of course, the influence of friends, just like you would in any other business.

Q. Do you know Mr. Vincenheller, of Fayetteville?

A. Yes, sir.

Q. Do you know whether or not he used his influence with the Board in securing the contract?

A. I don't know. He has been a good friend of mine. I think he did.

Q. Wasn't he here about that time?

A. He was.

Q. Don't you know that he did use his influence?

A. No, sir. I don't know.

Q. Isn't it your impression that he did?

A. Yes, sir.

(BY MR. WILLIAMS.)

Q. From whom did you buy these lands?

A. I bought what we call sixteen, something over 600 acres, from D. L. Gray, and the other part of the farm from Col. P. B. Hunt, of Dallas, Tex.

Q. Were you living in Lonoke County or Pulaski at the time you bought this land?

A. Yes, sir. Lonoke.

Q. How long had you been living there?

A. About eight years.

February 18th, 1901.

JUDGE FRANK HILL, recalled, testified as follows,
to-wit:

(BY MR. PATTON.)

Q. What office did you perform in the matter of buying a site for the new Penitentiary?

A. I was a member of the Penitentiary Board.

Q. Simply as member of the Board? Was that all, or were you assigned special duties on a special committee?

A. I was appointed a committee to locate the site of the Penitentiary somewhere in the forty acres out of which the site was selected in a full Board meeting. This to be done in connection with the Superintendent.

Q. Did you discharge that duty?

A. I did.

Q. Where was that site selected?

A. Where the new Penitentiary is now building.

Q. Who did you buy the land from?

A. As I understood, it was from Mr. Dickinson individually.

Q. Did he own the entire forty acres out of which this particular tract was carved?

A. That was my understanding. The tract, however, may not have been forty acres.

Q. How much of the land did you buy?

A. Eight hundred feet square; approximately, fifteen acres.

Q. How much did you pay for that?

A. Five thousand dollars.

Q. About how much per acre was that?

A. Three hundred and thirty-three and a third dollars, I think.

Q. Was an abstract of title to this land furnished you, or to the Committee, or to the Board?

A. That is my recollection.

Q. Do you know who Mr. Dickinson got this land from?

A. I don't recollect now.

Q. Did you ever examine the abstract?

A. My recollection is not clear, but I think so. My mind was satisfied, but at this date I can't recall just how. I haven't a distinct recollection about the abstract. That part of it was not a part of my duty as special committee.

Q. When you said you had no distinct recollection, you mean by that that you haven't a distinct recollection as to whether or not there was an abstract or as to whether or not you examined it?

A. My recollection is not clear about the abstract at all.

Q. That is, as to whether or not the abstract was furnished?

A. Yes, sir.

Q. Do you remember whether or not you or other members of the Board, or the Board as a whole, ever demanded that an abstract be furnished?

●—

A. No, sir. I say my recollection is not clear as to the abstract.

Q. Do you know how long Mr. Dickinson had owned it?

A. I don't recollect now. But my impression was that it had been only a short time.

Q. Had you examined the abstract of title to the land you could have ascertained the length of time he had owned it, could you not?

A. I suppose so.

Q. Do you know how much he paid for the land?

A. I do not.

Q. Had you examined the abstract of title could you not have told the amount he paid, or the amount of consideration expressed?

A. I could have told the amount of consideration expressed in the abstract.

Q. At least you never learned it from the abstract whether or not you examined it at all, that is the amount he paid for it?

A. I don't think so.

Q. Did you ever inquire how much he paid for the land?

A. I have no distinct recollection. The matter was discussed very fully, but I have no distinct recollection.

Q. Did you ever examine into the matter of the price of real estate in that vicinity at that time?

A. Yes, sir.

Q. What were the results of that examination? What did you find the prevailing market price of real estate in that vicinity to be?

A. I can scarcely understand that there was any prevailing price. I can scarcely understand that there is any prevailing prices now there or anywhere else. In other words, I don't catch the drift of that question.

Q. Did you try to ascertain for what price real estate could be bought in that vicinity?

A. The inquiry I made was not necessarily in that particular vicinity. But a number of properties had been offered near the city, perhaps not near the city either, but in reach of the city, that was under consideration as sites for the Penitentiary.

Q. Then you didn't try to ascertain what property in this vicinity could be purchased for for a Penitentiary site?

A. I knew of no other property that would be desirable for a Penitentiary site, and consequently made no inquiry as to price, in that vicinity.

Q. Why was this property peculiarly adapted for this purpose or more desirable for a Penitentiary site?

A. Because of the topography of the country.

Q. What is the topography of the country where this is located?

A. It is on the point of an elevated ridge considerably above the surrounding country and a particularly healthy location, in my judgment.

Q. It was more desirable for a Penitentiary site, but was it more desirable for all other purposes than the surrounding lands?

A. Not necessarily.

Q. Could you not have more correctly ascertained the value of this property had you inquired as to the price of other property in that vicinity?

A. I don't know.

Q. At least, you didn't make such inquiries?

A. No.

Q. You bought this property without making inquiry as to what was the price of land in that vicinity.

A. As I said a few moments ago, I had had occasion to make inquiry, and knew something of the value of lands in proximity to the city.

Q. You bought this property without making inquiry as to what was the price of land in that vicinity?

A. In that immediate vicinity, yes.

Q. Here within the last few months has the Penitentiary entered into a contract with the Arkansas Brick & Manufacturing Company for the hire of 300 convicts?

A. I can't remember the date exactly of the contract, but there is a contract with the Arkansas Brick & Manufacturing Company for the hire of convicts.

Q. What relation does Mr. Dickinson bear to this Company.

A. I think he is President.

Q. Where is the brick yard located upon which these convicts are at work?

A. Near the Penitentiary site.

Q. Isn't it on this forty acre tract of land to which you referred awhile ago?

A. No, sir.

Q. How near is it to the Penitentiary?

A. I judge about a quarter of a mile.

Q. Do you remember the length of time that this contract was to remain in force?

A. I think ten years.

Q. Did the Penitentiary not also make a contract with the Arkansas Brick & Manufacturing Company to supply the Penitentiary with brick to construct the new building?

A. There was an agreement to furnish the brick for building the new Penitentiary.

(BY MR. WILLIAMS.)

Q. With whom did you negotiate personally about this particular property?

A. The negotiations were made by the Board?

Q. I am asking what you did?

A. I did nothing in that connection except to discuss the matter on the Board until after the Board had proceeded and ordered the purchase of from eight to fifteen acres out of that particular forty at the rate of \$500 an acre.

Q. Do you mean to say you did not know the person with whom they were negotiating at that time?

A. Except as the matter developed in the discussion.

Q. With whom did you personally negotiate at any time relative to this particular piece of land?

A. With Mr. Dickinson.

Q. With whom else?

A. No one but Mr. Dickinson. But the negotiations were conducted as to the particular 800 feet square, the particular location of that tract of land within the forty acres. It had already been selected by the Board and the price fixed by the Board.

Q. Who else did you negotiate with? Any one concerning any of that land out there?

A. No one else.

Q. Did any other person ever speak to you in regard to it?

A. Not to my recollection.

Q. Did any other party desire to sell land out in that direction?

A. Not that I know of.

Q. Did Mr. Fletcher of the firm of Fletcher & Mandlebaum, desire to sell you some land out there in that direction, or to the Board?

A. Not that I have any recollection of.

Q. Do you know of his desiring to sell any land for Penitentiary purposes?

A. Not that I recollect of.

Q. Do you know whether Mr. Beauchamp was interested in this sale of land?

A. I don't. It was not clear to my mind whether the real ownership of that tract of land was in the Arkansas Brick & Manufacturing Company or in Mr. Dickinson, but I thought the latter.

W. W. DICKINSON, having been duly sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Mr. Dickinson, did you ever sell a tract of land to the Penitentiary Board upon which to erect the Penitentiary building?

A. The Company of which I am President did.

Q. What is the name of that Company?

A. The Arkansas Brick & Manufacturing Company.

Q. What did you realize for this piece of property?

A. Five thousand dollars. That included the property and the right to the switch. There is about a mile of track there.

Q. How many acres did you sell?

A. Eight hundred feet square—about fifteen acres, I think.

Q. At how much per acre would that be?

A. That would be \$333 $\frac{1}{3}$.

Q. How long had the Arkansas Brick & Manufacturing Company owned this land?

A. They had owned some of it for I don't know

exactly how long. And some of it we had bought very recently. Some of it we had owned some time before that.

Q. How long had you owned the particular tract upon which this site is now located?

A. It is located on two tracts of land—that is, part of two purchases.

Q. How long had you owned these two?

A. One piece owned only a short time.

Q. Did you ever furnish an abstract of title to the Penitentiary Board?

A. I did.

Q. You say you had owned part of it but a short time? For how long?

A. I could not tell you without looking at the papers. It was not a great while before that.

Q. Do you think it was as long as a year?

A. No, sir.

Q. Do you think it was six months?

A. No, sir.

Q. Do you think it was three months?

A. I could not tell you that. I know it was only a very short time before. I would not think it was three months.

Q. Who did you purchase that land from?

A. From Joiner.

Q. How much did you pay per acre?

A. Two hundred and fifty dollars. I think there was a little over ten acres in one piece—\$2,500.00.

Q. I will ask you whether or not your Company has ever entered into a contract for the hire of 300 convicts?

A. Yes, sir.

Q. About what time was that contract entered into?

A. I have brought the contract with me. Here are the original contracts.

Q. I will ask you to refer to that contract and tell this Committee the date of that contract?

A. I would like to say this in explanation of the purchase of that land: There is a forty acre tract; it is a hill. We gave the Penitentiary the choice of it, and they cut out this 800 feet square on top of the hill. I asked them \$500 an acre for that land, and I thought it was worth it—that is, in connection with this switch that we built in to the works there. We had a mile of track that cost about \$4,000.00, and in that proposition we gave them the right to use that track for all time to come, and they could not have built the track in there for less than \$4,000.00 or \$5,000.00. Now, here is a paper with every contract attached and you may take that. It is full and complete from beginning to end. If you want it as a matter of evidence I will tender it.

Q. With reference to this contract for 300 convicts, when was that contract entered into?

The witness here reads to the Committee a prepared statement which is here set out in full as follows:

In order that you may understand the basis of the claim of the Arkansas Brick & Manufacturing Company,

which for brevity I will hereafter call the Brick Company, under its contract for the hire of convicts, I, as its President, respectfully beg leave to submit the following statement, attached to which are copies of the contracts:

You will observe that the first contract was made February 3, 1899, between the State on the one side and the Arkansas Chair Factory Company, which for brevity I will hereafter call the Chair Factory, and that the second contract was made between the State on the one side and the Brick Company as assignee of the Chair Factory, on the other, on the 31st of July, 1899. Under the contract as amended, we are to pay fifty cents per day to the State for the labor of each convict, and are entitled to 300 men. At the time it was made we had a contract in force for forty men, with the privilege of sixty, and since it was made we have not had an average of more than eighty men. We expected when it was made to get the full number, 300, but at the time it was made the convicts, except those who were working under the other contract, had been placed on farms, and could not be taken out of the crops without serious loss to the State. This we did not wish to do, and did not ask for the men, although our contract gave us the right to the full number, without regard to consequences to the State.

We notified the Board some time since that we were now prepared to take the full number of men contracted for, but they have not been furnished us.

Neither I, personally, nor the Brick Company, had any connection with or interest in the Chair Factory, until the Brick Company bought all the assets of the Chair Factory in July, 1899. The paid up capital stock of the Chair Factory was \$15,000 and for it the Brick Company issued \$17,500 of its stock, which was distributed pro rata among the holders of the stock of the Chair Factory. In that way the former stockholders of the Chair Factory became stockholders in the Brick Company as follows:

S. J. Beauchamp, 163 shares	\$4,075
Claudius Jones, 163 shares	4,075
Claude Beauchamp, 24 shares	600
Yowell & Williams, 350 shares	8,750

In October last I bought all the stock of S. J. Beauchamp, Claude Beauchamp and Claudius Jones, and paid them for it \$8,750 in cash.

After we bought the stock of the Chair Factory, and made the amended contract, we began preparations to give employment to all the men contracted for, by enlarging the brick plant and erecting a planing mill for the manufacture of sash, doors and blinds. In these works we can now easily employ 200 men, and by increasing their capacity we can employ the 300 contracted for.

We have erected sheds and run-ways from the clay pit to the machines and from the machines to the kilns to protect men at work against weather.

We have now an investment of about \$100,000, which we made for the purpose of carrying out this contract and utilizing the labor to be furnished us under it. We have organized a Gin and Machine Company, which will employ a number of the men, and are preparing to manufacture wheels and ball bearing axles, in which we expect to work still others.

We have on hand about \$50,000 worth of machinery, warehouses, kilns, etc., which we would not have purchased if we had not expected to comply fully with our part of the contract, and also expected that the State would do the same. By the terms of the contract the State has a lien upon all this machinery to secure the full and faithful performance of our agreement. We believed that the honor of the State was sufficient security that it would perform its part and in reliance thereon have made our large investment, which would not have been made otherwise. Our contract for 300 men is signed by every member of the Board, as well as by the Superintendent and Financial

Agent. Was not this enough to satisfy us we might go ahead? If we could not act on the faith of a contract with the State, made by its Governor, its Secretary of State, and its Auditor, its Attorney General, since then elected, and now acting Governor, and its Commissioner of Mines, who could be trusted? Shall our investment made on the faith of that contract be confiscated?

I have heard it suggested that outside parties would endeavor to secure an act of the Legislature to cancel all contracts now in existence, including ours. When the State contracts with an individual, the obligation should be as binding upon it as upon the individual; and when it requires security of the individual, it should strictly perform the contract on its part. How anyone interested in the good name and honor of the State, could desire contracts made by it, in good faith, to be cancelled I can not understand, unless it be that self-interest or jealousy perverts his judgment. It can not be that honorable and impartial representatives of the people can so regard the matter.

I feel that our contract should not be disturbed, and beg to make some suggestions with regard to it:

1. The contract is a good one for the State. We pay fifty cents per day per man, which is equivalent to \$150 per man per year. For the 300 men covered by our contract the State would receive \$45,000. I am informed by the Superintendent that it takes twenty-two and one half cents per day per man to feed, guard, clothe and furnish medical attendance. There are now in the Penitentiary about 650 men. At the sum above stated it would cost \$53,384 to care for all of them one year. The result is, that the amount which we agreed to pay for 300 men will almost defray the cost of the entire 650.

But the contract is a good one again, because its profits are certain and without risk. There are no chances taken with us. In making a crop the State has no guarantee of

what will be made; but that depends upon the seasons and innumerable other contingencies and upon fluctuating prices. If the men are working upon the share system and should gather six bales of cotton each, at ten cents per pound the State getting one-half of it would have \$150, but if the price should be six cents a pound it would have only \$90 per man. That each man would make six bales of cotton, and that each bale would sell for ten cents per pound is possible, but not certain, and hardly to be expected.

2. It is to the interest of the convicts that our contract be carried out. In their work under it, whether at the brick yard or in the mill, they are protected against the weather. The location of the plant is high and healthy, and as it adjoins the new Penitentiary grounds the men are kept there at night, where they can be more securely and more comfortably kept than elsewhere. When a man works here in the brick kiln or in the factory he learns a useful trade, and when his term expires is prepared to do more for himself and those dependent upon him than if he were kept at work in the fields. Besides, it costs the State less for guards here, than when men are kept elsewhere.

3. It would be unjust to us to disturb the contract. We have carried our contract to the strict letter and we have a right to expect the same honorable and faithful observance of the promises of the State as it exacts of us. The contracts were entered into in perfect good faith. The State was represented in making them by men selected by the people for their fidelity and efficiency. Every officer of the Board signed the contracts. We had a right to rely upon their being executed. We did rely upon it. We have incurred an expense which would have been wholly unreasonable except for the contract, and it would be as unjust to us, as dishonorable to the State to attempt to cancel it. We did not demand what we were entitled to when it would cause loss to the State, and we feel that it should not violate its agreement when it would destroy the value of our investment made because of its investment.

We have heard that there has been some criticism of the Penitentiary Board on account of the contract with us for the building of the new Penitentiary, and feel that a statement as to that is proper.

On June 29th, 1900, the Board invited us to submit a bid for the erection of the buildings, walls, etc., of the new Penitentiary. We made a bid, and upon the basis of it entered into a contract with the Board, a copy of which we herewith submit.

We have received for the work done up to this date about \$60,000, based upon the estimate of the State's architect; and we confidently assert that the amount is exceedingly reasonable. The work is there, and you may determine for yourselves whether it was well done. For laying brick in the walls we have employed skilled free labor at a price of forty-five cents per hour and have received \$8.50 a thousand; while at the same time we were selling brick to contractors in this city at \$8.00 a thousand, delivered at the building, to be laid by them. We have supplied brick for a great many buildings at this place, prominently the Blass and Rose buildings between Third and Fourth on Main street. The contractors paid us for the brick in these buildings \$8.00 per thousand delivered on the ground. We have sold many brick in smaller quantities at \$9.00 per thousand, and select brick of the same quality that we have used in the Penitentiary building we have received \$16 per thousand for on the cars. The foreman informs me that the labor in a lot of the work done upon the Penitentiary cost us \$6.85 per thousand. This is the ornamental and difficult work in which a man could not lay more than 700 brick per day. We paid the men forty-five cents an hour for nine hours or \$4.05 a day, and received for the work at the rate of \$8.50 per thousand for brick laid, wall measurement. We are confident that the work has been done as cheap, if not cheaper, than any other contractor could have been gotten to do it. It was done cheaper

than property owners, looking after their own interests, have gotten similar work done at the same time. It is easy for contractors or idle people to say that if they had had a chance they could have done it for a great deal less money. Such remarks are often made out of jealousy, sometimes out of bad feeling, sometimes without understanding on the part of competitors. But it is easy to show the work that was done and the prices that were paid for similar work at the time. And from this it will appear plain to this Committee that the Penitentiary Board got a good contract for the building of the Penitentiary.

We do not know whether other bids were invited or made. We were invited to make one. We did so, the contract was awarded us, and we proceeded to carry out its obligations on our part. How well we have done it the completed work will afford the best evidence. The matter has been handled in a strict business manner, and upon strictly business principles.

The agreements between us and the Board have been in writing, and their terms and the circumstances of their making are susceptible of easy proof. Upon our part there has never been anything to conceal, and nothing was conceived except in the best faith. The Board is composed of men chosen because of their high standing and supposed fitness for the discharge of their duties, and nothing has ever been done to detract from any of them in that particular, so far as I have known.

If there is any explanation or information not contained herein that we can give, we will most cheerfully furnish it, with an abiding faith that when the matter is understood that there will be no occasion for action that will be unjust or prejudicial to us or in disregard of the obligations of the State.

This Agreement, made and entered into this the 3rd day of February, 1899, by and between J. C. Massey, Financial Agent, and E. T. McConnell, Superintendent of

the Arkansas State Penitentiary, parties of the first part, and the Arkansas Chair Factory, a corporation organized under the laws of the State of Arkansas, party of the second part, Witnesseth:

Parties of the first part have this day hired to party of the second part, a sufficient number of able-bodied convicts, not less than forty for the first year, and as many thereafter as needed, for a period of ten years, beginning on the day of the delivery of the buildings inside the Penitentiary walls, and ending January 1, 1909, at the rate of fifty cents a day for each convict, payable on the first day of each succeeding month.

Parties of the first part are to furnish necessary buildings as may be agreed on by the parties hereto, except dry kilns, and sufficient power to run the machinery as may be agreed upon, and to feed and clothe said convicts.

Parties of the first part are to proceed with all due haste in the preparation of all buildings agreed upon in this contract.

Parties of the second part are to use said convicts in the manufacture of chairs, chair stock, wagon spokes, hubs and felloes, etc., inside the Penitentiary walls.

Parties of the second part bind themselves to use as many as forty convicts during the first year of this contract, and as many more as needed thereafter, provided that at no time shall the number be less than forty, nor more than two hundred (200).

Parties of the first part are to have all the shavings and refuse from said machines, to be taken away from the machines by the parties of the first part, and a lien is hereby held by the party of the first part, on all machinery belonging to the party of the second part, used in the manufacture of said chairs, etc., for amounts due for labor performed under this contract, or supplies furnished, and for the faithful performance of all the conditions herein, which

machinery shall be in the actual possession of the said first party as a pawn or pledge for said purpose.

Said convicts are to be worked under the control and management of the Superintendent of the Arkansas State Penitentiary.

In witness whereof, the parties of the first part, by their own signatures, and the party of the second part by the hand of its President and Secretary, have hereunto set their hands this the 3d day of February, 1899.

DAN W. JONES, Governor,

CLAY SLOAN, Auditor,

JEFF DAVIS, Attorney General,

ALEX C. HULL, Secretary of State,

FRANK HILL, Com. of M., M. and A.

Board of Commissioners for the Arkansas State Penitentiary,

J. C. MASSEY, Financial Agent,

E. T. McCONNELL, Superintendent,

Parties of the First Part.

ARKANSAS CHAIR FACTORY,

By S. J. BEAUCHAMP, President,

NAL WILLIAMS, Secretary.

Attest: ALEX C. HULL, Secretary of State.

AMENDMENTS.

This Agreement, made the 31st day of July, 1899, by and between J. C. Massey, Financial Agent, and E. T. McConnell, Superintendent of the Arkansas State Penitentiary, parties of the first part, and the Arkansas Brick & Manufacturing Company, as assignee of the Arkansas Chair Factory, as party of the second part, Witnesseth:

That whereas, the first parties entered into a contract with the Arkansas Chair Factory, on the 3rd of February, 1899, which said contract and all rights and obligations under it, were assigned by said Chair Factory to the second party herein, with the full consent of the first party; and

whereas, certain alterations and amendments of said contract have been agreed upon between said first party and the said second party, which they desire to have reduced to writing. Now therefore, the said first parties and second parties, each in consideration of the undertakings and obligations of the other, agree to and with each other, that the said contract, as made February 3rd, 1899, shall be and remain in full force and effect, except as amended by the provisions hereafter set out, but that the same be amended as follows:

The parties of the first part agree to erect two brick buildings at the plant of the party of the second part. One building fifty by two hundred feet, two stories high, with eighteen inch lower walls, thirteen inch upper walls, with fourteen feet ceilings, and one building forty by seventy feet, one story high, with thirteen inch walls and fourteen feet ceilings, with a shed running around the two sides, twenty-five feet wide, covered with corrugated iron, and also stockades and enclosures.

The parties of the first part agree also, to furnish boilers of two hundred horse power capacity, and engines of one hundred and fifty horse power capacity, to set and connect same to the line shaft of the machinery in the buildings, and the party of the second part agrees to pay the State the actual cost of the boilers and engines on the following terms: In one, two and three years, with interest from date at the rate of six per cent. And a lien is hereby created on said boilers and engines until they are fully paid for.

The State is to furnish, without charge, as many convicts as are necessary to operate the boilers and engines, including an engineer, the total number not to exceed five.

The party of the second part is to furnish fuel and to keep boilers and engines in repair.

The parties of the first part also agree to move all the machinery now in the Chair Factory and Excelsior Plant,

to the buildings to be erected at the plant of the second party, and to install same therein, in perfect running order, as soon as the buildings are erected, without expense to the party of the second part, and to furnish belts and to make connection with line shaft, the State to have a lien on all machinery belonging to the party of the second part, or any interest in any machinery that may hereafter be bought by the party of the second part, and placed in its plant, for the moneys that may become due, for labor or material furnished.

The parties of the first part also agree to allow the party of the second part the use of the machinery in the Excelsior Plant, while this contract is in force, and the party of the second part is to keep such machinery in repair.

The party of the second part agrees to furnish all brick necessary in the erection of the two buildings, and in other buildings the Board may erect—buildings when completed, to become the property of the second party.

The parties of the first party also agree to guard, feed and clothe said convicts, and furnish medical attention for same, and in case more than one guard is required for each ten men, while they are being worked outside of the factory walls, then the party of the second part will pay the cost of such additional guards.

The party of the second part may use said convicts in the manufacture of chairs, chair stock, brick, wagon spokes, hubs, felloes and furniture, plow stock, etc., in the factory, and may use them outside the walls in other manufacturing, agriculture, timber and railroad work, and such other work as the Board may approve, provided the party of the second part furnishes the stockades and transportation for the men when working outside the walls of the factory.

In case any of the convicts become sick and unable to work, the parties of the first part agree to furnish other able-bodied men to take their places.

The first party agrees that after January 1st, 1900, it will furnish on demand of the second party, as many as three hundred able-bodied men, and both parties agree that at no time shall less than one hundred men be worked under this contract.

It is expressly agreed that settlement with the State shall be made each month, and when at any time the party of the second part becomes three months in arrears, forfeiture of this contract may be declared by the Board, it having first served a notice on the party of the second part, stating that forfeiture will be taken unless payment is made within ten days from date of notice.

In Witness Whereof, the parties of the first part, by their own signatures, and the party of the second part, by the hands of its President and Secretary, have hereto set their hands, this 4th day of August, 1899.

DAN W. JONES, Governor,
CLAY SLOAN, Auditor,
JEFF DAVIS, Attorney General,
ALEX C. HULL, Secretary of State,
FRANK HILL, Commissioner M., M.
and A.,

Board of Commissioners for the Arkansas State
Penitentiary.

J. C. MASSEY, Financial Agent,
E. T. McCONNELL, Superintendent,
Parties of the First Part.

W. W. DICKINSON, President,
JOHN W. DICKINSON, Jr., Secretary.
Parties of the Second Part.

Attest: ALEX C. HULL, Secretary of State.

Little Rock, Ark., June 2. 1900.

To the Honorable Penitentiary Board, City.

Gentlemen:—As you have made changes in your plans for constructing the Penitentiary walls and buildings, and have requested us to submit to you a proposition, to build the walls and complete all the buildings, as per your revised

plans herewith submitted, which includes all of the buildings and the walls, we are pleased to submit the following:

We will complete the walls and buildings, as per plans and specifications (specifications of buildings to be submitted later), furnish the brick, laying them only, for the sum of \$8.50 per thousand, wall measurement. You to furnish all material and labor, etc., we to lay and furnish the brick only. This is to apply to common brick only. Where the buildings and walls are faced with pressed brick, of a reasonable uniform color, the price is to be \$12.50 per thousand. Measurement to be taken on pressed brick, face only.

It is understood that wall measurement shall be: That buttresses shall be measured on all sides for width, and by their projection at base. That cornices shall be measured solid, taking their height by their greatest projection. That all openings exceeding one hundred square feet, shall be deducted, and that seven and one-half brick to each superficial foot of four inches, or one brick wall, shall be measured, *i. e.*, twenty-two and a half brick shall constitute a cubic foot.

This contract is to apply to all work that has been done up to this time, and that may hereafter be done.

Settlements to be made every thirty days.

Yours truly,

{ SEAL }

ARKANSAS BRICK & MANUFACTURING CO.,

W. W. DICKINSON,

President.

Accepted and approved by the Board, this June 2nd, 1900.

DAN W. JONES,

Governor and President of Board.

FRANK HILL,

Commissioner Mines, Manufactures and Agriculture.

{ SEAL }

A. C. HULL,

Secretary of State

and Secretary of Board.

Attest: ALEX C. HULL, Secretary of State.

Signed in duplicate.

State of Arkansas.

I, Alex C. Hull, Secretary of State of Arkansas, do hereby certify that the above and foregoing is a true copy of the original contract between Board of Penitentiary Commissioners and the Arkansas Brick & Manufacturing Company.

ALEX C. HULL, Secretary of State.

This January 17, 1901.

Little Rock, March 28, 1900.

To the Honorable Arkansas State Penitentiary Board, City.

Gentlemen:—We submit the following proposition for your consideration:

We will furnish a superintendent to look after the building of the Penitentiary, and will lay the brick in the walls for \$2.50 per thousand, wall measurement, you to furnish brick under contract already existing with us, and all material and other labor, we to lay the brick only.

Yours truly,

ARKANSAS BRICK & MANUFACTURING CO.

W. W. DICKINSON, President.

Accepted this March 30, 1900.

DAN'L W. JONES,

Governor and President of Board.

ALEX C. HULL,

Secretary of State and Secretary of Board.

FRANK HILL,

Commissioner Mines, Manufacture and Agriculture.

E. T. McCONNELL,

Superintendent of Penitentiary.

M. D. L. COOK,

Financial Agent Penitentiary.

This bid was made to duplicate the old Penitentiary, except the walls were to be 400 feet by 500 feet instead of 500 feet by 600 feet.

On March 28, 1900, we made a contract with the Penitentiary Board, a copy of which we herewith submit. This contract was to furnish the brick at \$6.00 per thousand and lay them at \$2.50 per thousand, wall measurement. We had commenced the foundation of the walls and had nearly finished when I was informed by our manager that Superintendent McConnell had telephoned him to stop the work. I at once went either to the architect or members of the Board and wanted to know why this order had been given and I was told that the plans had been changed and that Mann & Gibb would look after the work. They were not employed up to that time. I went before the Board and told them, as they well knew, that the contract made March 28, 1900, was to duplicate the old Penitentiary walls and building, except that the walls were to be 400x500 feet instead of 500x600 as I understand they are. I told them that we could not continue the work according to the plans and specifications submitted unless we were paid extra for our work. After going over the matter for two or three days, I made them a proposition which was dated June 2, 1900, and which was accepted by the Board. A copy of this contract I herewith submit.

Q. This is an explanation here that you have read that you would like to be taken as your testimony?

A. Yes, sir.

Q. To whom did you intend to submit this explanation when you prepared it?

A. I understood that you were in session and would

want to know something about the Penitentiary affairs. I prepared it for you and also for the entire Legislature if they take these contracts up.

Q. You intended, then, to submit it to this Committee?

A. Yes, sir.

Q. Do you understand in a general way what the duty of this Committee is in regard to this investigation?

A. I suppose to look into this matter and get the facts.

Q. Do you not understand that it is this Committee's duty to ascertain whether or not there has been mismanagement of the Penitentiary affairs?

A. I suppose so.

Q. Has it ever been intimated to you by members of this Committee that an explanation would be demanded of you in regard to these transactions?

A. No, sir.

Q. Then why should you anticipate that an explanation would be demanded of you in these transactions?

A. Because I thought you would want to know about the facts connected with the building of the Penitentiary.

Q. If there had been no mis-management in regard to these particular transactions, why should you suspect we would want to know anything from you in regard to it?

A. Only from rumors on the street, and from the papers over the State.

Q. Had you ever heard it rumored that these transactions with your Company would be investigated?

A. Yes, sir.

Q. Have you ever heard anything that you know of that came from this Committee or members of this Committee?

A. No, sir. Just general rumor.

Q. When did you prepare this explanation?

A. It has been probably a week ago.

Q. When were you subpœnaed to appear before this Committee?

A. To-day.

Q. You anticipated that the Committee would want to know something about the management of these particular affairs?

A. I supposed that they would want to know all about the matters pertaining to the building of the Penitentiary.

Q. As you stated awhile ago, didn't you understand that we are just to investigate as to the mis-management of affairs?

A. I supposed you would go into everything and the full particulars and facts of the matter. You know that we have heard of these contracts here for the last two or three months. They have been talked about in a general way, and I simply wanted to show my connection with it.

Q. Had you any reason to believe that these particular contracts would be assailed by this Committee?

A. No reason except rumors. Not this particular Committee but by the Legislature.

Q. With reference to this contract for 300 convicts to work on the brick yard, how long was this to remain in force?

A. These 300 men was to remain in force until the expiration of the first contract. This contract was amended. The first contract was made in February and the amended part of it was made in July.

Q. Did you enter into a contract for a term of ten years?

A. I did not.

Q. Or your company?

A. No, sir. The contract entered into dated February 3rd, was for ten years; but I didn't make that contract and had no connection with it.

Q. You nor your Company had no connection with it?

A. No, sir. No connection with it at the time it was made, and not until July. Then we passed into the contract.

Q. You were the assignees of these contractors for a period of ten years?

A. Yes, sir. We acquired it after it had been made about six months.

Q. Were you to furnish brick to the Board for the construction of the new Penitentiary?

A. Yes, sir.

Q. Does the Penitentiary consume your entire output of brick?

A. No, sir.

Q. What part of it do you furnish to them—that is, relatively speaking?

A. I would say within the last few months since we have been building it that they consumed nearly half the brick.

Q. This other, more than half, then, has been sold to other parties?

A. Yes, sir.

Q. This was a contract for the hire of 300 men wasn't it?

A. Yes, sir.

Q. About how many men have they furnished?

A. I stated that. An average of about eighty, so our men out there tell me.

Q. Do you employ any one else except convicts for your general work aside from skilled labor in the brick yards?

A. Yes, sir.

Q. How many other men do you employ?

A. There is several of them. I suppose ten or fifteen. While we were building the Penitentiary there were quite a lot of masons outside of the men we had there. During that time I suppose we had thirty-five or forty.

Q. I mean your ordinary labor on the brick yard?

A. The brick yard and the mill, for they run together—and in both of them we work—I think there was eleven men working in the mill.

Q. A large majority of your laborers are convicts?

A. Yes, sir.

Q. How long have they been working during the last year?

A. About a year and a half from the time we got that contract.

Q. During all this time has the majority of your common labor been convict labor?

A. Yes, sir. Except on the Penitentiary walls and that was all free labor. There was one convict who could lay brick and he was only used on the Penitentiary walls a very small part of the time. The balance of the masons were free men.

Q. Aside from the hire of your labor and the investment of capital, that is in machinery, is there much expense attached to running your brick yard?

A. Yes, sir.

Q. What is that expense?

A. It is fuel. It is one of the largest expenses, costs about \$2,000 or \$2,500 a month.

Q. What other expense?

A. I could not tell you without taking the pay-rolls and looking at them.

Q. I am speaking in a general way?

A. We pay out \$400 or \$500 a week for free labor, I think. The pay-rolls are sometimes larger and sometimes less.

Q. Eighty convicts a day would cost you \$40 dollars a day wouldn't it?

A. Yes, sir.

Q. That would amount to \$240 per week?

A. Yes, sir.

Q. And fifty-two weeks in a year would be \$12,480?

A. It was about that. It was from \$1,000 to \$1,300 a month for the Penitentiary.

Q. You say that this is the greater part of your labor?

A. It is not the greater part of our expenses.

Q. It is the greater part of your common labor?

A. Yes, sir.

Q. Then you would pay the State about \$12,480 a year at that rate?

A. Yes, sir.

Q. Do you know how much brick you have furnished to the Penitentiary within the last year in round numbers?

A. No, sir. I know about the number of brick. Between six and seven million brick we have furnished the Penitentiary.

Q. I will ask you if, in your opinion, it is not as much as \$30,000—that is, the brick you have furnish in that time?

A. You can very easily figure it. I think the last estimate we had was about 6,700,000.

Q. At how much per thousand?

A. The contract we are working under is \$8.50 per

thousand in the walls, but \$6.00 would represent the brick. I mean this \$8.50 is the price we are getting for it in the walls.

Q. But you received \$6.00 per thousand for the brick alone.

A. No, sir. We are working under a new contract. That was the first contract.

Q. In your first contract did you not agree to furnish them at \$6.00?

A. I did?

Q. And lay them for \$2.50?

A. Yes, sir.

Q. In your last contract did you not agree to furnish and lay them for \$8.50?

A. I did. That is wall measurement.

Q. Would not that be at the rate of \$6.00 per thousand?

A. You don't couple the two together.

Q. I will ask you to make an estimate for brick alone to the Penitentiary aside from the labor?

A. We are not furnishing them alone. We are furnishing them together.

Q. Do you know what your labor in laying them in the walls will cost? Could you not make an estimate as to the price that you are furnishing these brick to the Penitentiary for?

A. We are furnishing them at \$8.50 in the walls, wall measurement.

Q. How much do you realize on your brick per thousand under this contract? Do you think you realize as much as \$6.00 per thousand?

A. Yes, sir. We get more than that. That wall measurement is extra measurement.

Q. How much more would you estimate?

A. I think it would be—you would have to get a brick man for that.

Q. It is at least \$6.00 per thousand?

A. Yes, sir. At least. More than that—that is, to figure the wall measurement.

Q. Six million seven hundred thousand at the rate of \$6.00 per thousand? Would it not come to about \$40,000?

A. According to your figures I suppose it would.

Q. If you have realized more than \$30,000 from the sale of your brick to the Penitentiary, then you have realized more than that from the sale of brick to other parties?

A. We have.

Q. Inasmuch as you have sold more to other parties than to the Penitentiary?

A. I don't know. I said about half. I am only guessing. I don't keep the books. I have two or three other lines of business to look after, and keeping books and accounts I know very little about.

Q. We will assume that the Penitentiary bought half of your brick and that you have realized \$30,000 from them. Then on your entire output you realized at least \$60,000?

A. I could not tell you. We realized \$16.00 for a lot of the same kind of brick that went into the Penitentiary walls without laying them.

Q. You have realized more, then, on a direct sale to other parties than to the Penitentiary?

A. I could not tell you. We have got a better price, not counting the wall measurement, than the price furnished to the Penitentiary.

Q. According to your best estimate have you not realized more on brick sold to other parties than on brick sold to the Penitentiary?

A. I would say so. I would say that our price for brick in Little Rock delivered by wagon is now and has been for months—I don't know how long—\$8.00 per thousand kiln run, \$9.00 per thousand all hard, \$12.00 to \$16.00 per thousand for select face brick.

Q. Then if you have realized more from the sale of brick to outside parties than from the sale of brick to the Penitentiary, you have realized more than \$30,000 from sale of brick to outside parties, haven't you?

A. I could not tell you.

Q. According to your own estimate?

A. I would not make any guess about that. I think I told you awhile ago I thought we had furnished the Penitentiary not to exceed half the brick we had manufactured, probably not half.

Q. If you realized \$30,000 from the sale of brick to the Penitentiary, then, according to your own estimate,

haven't you realized more than that amount from brick sold to outside parties?

A. That is a matter that I would have to go through the books to say correctly. But upon the hypothesis that you put it, it would be more.

Q. According to the estimate made here awhile ago, in your opinion, haven't you realized more than \$30,000 from brick furnished to the Penitentiary?

A. Yes, sir. We realized, I think, over \$40,000.

Q. Then if you have done this you have realized more than \$60,000 from your entire output of brick?

A. For what length of time?

Q. During the time you have been furnishing brick to the Penitentiary?

A. I could not tell you that without going through my books.

Q. And didn't you state awhile ago that to your best judgment that the greater part of your free labor, the greater part of your common labor, cost you about \$12,000?

A. In the neighborhood of that. The bills have been running from \$1,000 to \$1,300 a month.

Q. Then do you not think that this contract with the State for the hire of convicts has been a success from a financial standpoint to your Company?

A. I do, provided we can continue it. We have made these investments.

Q. You are manufacturing brick in a new and improved manner—that is, an improved process, are you not?

A. Yes, sir.

Q. Does it require a great out-lay of capital for machinery in the manufacture of ordinary brick as you manufacture?

A. Yes, sir. I tell you on that paper there, that we have an investment of about \$100,000, and there is probably \$70,000 of it—this is an estimate, I would say, two-thirds—composed of machinery, dry kilns and patent kilns, sheds, etc., for the manufacture of brick, the other for the manufacture of lumber.

Q. What additional machinery do you have—that is, more than the old-fashioned way of manufacturing brick?

A. We have got six patent kilns. We built these ourselves. Our man told me that he had an estimate, and that it would cost \$3,500, figuring the brick at \$6.00—that is, for one kiln. We have got six of these kilns and they are on our inventory at \$3,500 apiece—\$21,000.00. We have one dry house that cost about \$9,000.00. And then we have one machine there that cost \$9,000.00 or \$10,000.00—that is, outside of engines and boilers, and, of course, a good many other expenses that I could get you the full amount of.

Q. Is the off-bearing done by machinery?

A. Done by wheelbarrows and done on cars that are run into the dry kiln and run on tracks.

Q. Can you manufacture brick cheaper than those who manufacture them in the old-fashioned country way?

A. I could not tell you. I never manufactured any

other way. We can make them pretty cheap now. We have demands for more brick than we can furnish.

(BY SENATOR BUCKNER.)

Q. You say there in your examination that you consider your work for the last year to have been profitable?

A. Yes, sir.

Q. If the contracts were abrogated just at this time leaving the machinery and mills on hand that you have, your loss would far exceed the profits up to this time?

A. Yes, sir. Because we have a good deal of money invested in the plant. We have been operating that plant for about four years.

(BY MR. PATTON.)

Q. Should these contracts be cancelled could you not continue operating with free labor?

A. Yes, sir.

Q. Don't other companies manufacture brick and make it a profitable investment with free labor?

A. I suppose they do.

Q. Then, wherein could you be damaged to any great extent?

A. The difference in the price of labor.

Q. What is the difference in the price of labor?

A. Ordinary labor is \$1.00 to \$1.25 a day.

Q. Then you have cleared at least this difference in the cost of that and ordinary labor?

A. We think we have. But all our profits have gone into buildings and machinery, etc.

Q. You still count that as your assets?

A. Yes, sir. But it would not be as profitable with free labor as convict labor. It is necessary to go to a great deal of expense to work these men and work them profitably, and we have done that. We would not have gone to anything like the expense if we had not thought our contract would be carried out in good faith. It is not a question of what amount of money we have made in the last year. We might have made a large sum of money or might have lost money.

Q. In your written statement that you have submitted to the Committee do you not make reference to the State's cancelling these contracts?

A. I do.

Q. Why did you make these references?

A. Because I have heard it spoken of on the streets.

Q. Do you know whether or not a bill has ever been introduced to cancel these contracts?

A. No, sir. I do not. I have not seen a bill, but I have been watching to see such a bill.

Q. Have you ever been informed from a reliable source that such a measure would be introduced?

A. Just from common rumor. You can hear most anything about you, gentlemen, if I wanted to tell it. I have heard a good many things that I would not like to tell.

February 19th, 1901.

GEN. E. B. KINSWORTHY, having been duly sworn,
testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name and residence?

A. E. B. Kinsworthy, Little Rock, Ark.

Q. Did you ever have a conversation with Mr. E. T. McConnell about the time or after the time that the new site for the Penitentiary was purchased, with reference to that site?

A. I could not be positive whether I ever did or not. I don't remember.

Q. To refresh your memory, do you remember ever having such a conversation in which the price paid for that property out there was brought up or discussed?

A. I remember having a conversation with some one at the time that site was bought, but whether it was Mr. McConnell or some one else I am unable to say. It was a casual conversation on the street like you would have with any one you would meet. I am rather of the impression that it was Mr. McConnell, but I would not be certain about it. Whoever it was I asked him what they gave—that is, what the people who bought the land gave for the land—and I think it was Mr. McConnell but I would not swear it was. My recollection is that it was right down here across the street from the cigar stand, and my impression is that the conversation was with him, but I would not swear that. It was not fixed well enough on my mind.

I remember I asked him the question "how much the Brick Company, or whoever bought it"—I didn't know who bought it—I asked him "how much the parties that the State bought from gave for it," and he told me but I can't remember what that was now. And then I asked him "what the State gave for the part it bought," and he told me what that was. I don't remember what it was. And I said to him it "seemed to me like that was a big price for the State to give." And I also said, "I believe they would have given the State that site to have put the Penitentiary there for the advantage that would have been to the brick yard."

Q. Do you remember the reply of the gentleman with whom you had the conversation as to that?

A. My recollection is he just laughingly said, "Well they might have done that."

Q. Whoever it was said that they might have done that?

A. Something to that effect.

Q. Might have done what?

A. Might have donated the State the land in order to have had the Penitentiary located there. My understanding is that Mr. McConnell had nothing to do with buying the land, that the Board did that. I don't know whether he even recommended it or not.

Q. Do you remember whether or not the party with whom you had this conversation was one of the manage-

ment—that is, the Board of Directors, Superintendent or some one else?

A. My impression is that it was Mr. McConnell. I would not mind asking him if he was the party, but I would not swear straight out that it was. It was some of the parties out there, and my impression was that it was McConnell, and it was not a member of the Board but some of the officials out at the Penitentiary,

Q. Do you remember of repeating about the substance of this conversation to Charley Jacobson?

A. I have talked to Charley so many times about those things I could not say. I may have done so.

Q. If you had such a conversation with Charley Jacobson in which you recited substantially the facts that you have here and told him it was Mr. McConnell that time you had the conversation, wasn't it Mr. McConnell?

A. Yes, sir. If I told him at the time I had this conversation with Mr. McConnell, I am pretty well satisfied it was. I don't know that Mr. McConnell will deny it if he remembers it. If I told Charley Jacobson it was Mr. McConnell, it was Mr. McConnell.

Q. What official position have you occupied in this State?

A. I have been a member of the State Senate and Attorney General and President of the Senate one time.

Q. While you were Attorney General and a member of the Penitentiary Board, do you remember of any con-

tractor offering the State \$1.00 a day for convicts to be worked on the Choctaw road, I believe it was?

A. I will tell you all I know about that. Mr. Massey, who was Financial Agent, came up to the State House and said he had a proposition from some parties to hire some convicts, and my best recollection is that it was \$1.00 a day that they offered him. And he went in, so he told me, and reported it to Governor Jones, and, so he said, Governor Jones called a meeting of two or three members of the Board. I wasn't in there. I understand Mr. Hull and Mr. Hill and Governor Jones were present, and Massey came out and told me what the proposition was. They didn't send in for me. He said that the Governor said that he would not hire them to work on a railroad at any price. And said there was not any use in going further with the proposition at all, and so it was not submitted to a regular Board meeting at all. All I know about that is just what Mr. Massey told me. He told me about it at the time.

Q. Didn't that same management afterwards hire convicts to work on a railroad under Governor Jones' administration?

A. Yes, sir. The Board hired them. And I told Mr. Massey I would like for that proposition to be submitted to the Board; that we ought to accept it, it was more than we were getting then. He replied that the Governor had had a meeting there with two or three members of the Board and they decided they would not let them out at all. And

they were afterwards leased to Bright & Reeves, I think.

Q. When were you Attorney General?

A. I went in the 17th of January, 1895, and went out the 17th of January, 1899.

Q. When was this proposition of which you speak to hire convicts at \$1.00 submitted, if submitted at all?

A. My recollection was it was in the summer before I went out in the winter.

Q. In the summer of 1898?

A. I think so. All I know about that is what Mr. Massey told me. I remember speaking to the Governor myself about it and he said he was not in favor of hiring them out to work on railroads.

Q. As to this reply of Mr. McConnell, in which he said that possibly the State could secure that property for nothing, did you take it seriously?

A. No. I didn't take it seriously from him. He just said it in a laughing way—like he said a good many things.

February 20, 1901.

M. D. L. COOK, being recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Were you Financial Agent of the Penitentiary when the Board entered into a contract with the Arkansas Brick & Manufacturing Company to furnish brick for the erection of the new State Penitentiary?

A. No, sir.

Q. I will ask you, then, if the Arkansas Brick & Manufacturing Company has been furnishing brick to the new State Penitentiary?

A. Yes, sir.

Q. I will ask you if there is not a contract existing between the Penitentiary and this Company for the hire of convicts to work on the brick yard?

A. Yes, sir.

Q. How many convicts does this contract include?

A. Really I don't know what the first contract was. They have increased it to 300, I believe. The Arkansas Brick & Manufacturing Company have 300 men.

Q. As assignees of the Chair Factory a contract for 300 men?

A. It is all one thing as I understand it. That concern out there has a contract for 300 men.

Q. For how long a time does this contract remain in operation?

A. I don't know about that. I think ten years from the time it commenced.

Q. Do you know how many men have been working under this contract for the Brick Company?

A. I would not know without referring to the books.

Q. Could you tell us the amount that has been paid by this Company to the State for the hire of convicts since this contract for 300 men has been in operation?

A. Yes. I think I could. I have a statement here.

Cost of new Penitentiary to date:

Paid to Arkansas Brick & Manufacturing Company...	\$40,053.85
Deducted from account Arkansas Brick & Manufacturing Company	18,879.40
Paid sundry bills.....	15,581.19
Paid for fifteen acres land....	5,000.00
	<hr/>
	\$79,514.44
10,342 days labor to January 1st, @ 50c.....	5,171.00
	<hr/>
	\$84,685.44

Q. You paid this Company then about \$40,000?

A. Forty thousand fifty-three dollars and eighty-five cents.

Q. For material and brick?

A. Yes, sir.

Q. And they have paid you for convict hire \$18,000?

A. Eighteen thousand eight hundred and seventy-nine dollars and forty cents.

Q. That would be deducted from the amount the State owed them on settlement?

A. Yes, sir.

Q. That \$40,000 represents what you have paid them after this deduction was made for labor?

A. Yes, sir. That is the cash we have paid them.

Q. That is actual cash?

A. Yes, sir.

Q. Then had you not received a credit for labor you would have paid them how much?

A. Fifty-eight thousand nine hundred and thirty-three dollars and twenty-five cents.

Q. Then you have paid them in cash and labor \$58,933.25?

A. Yes, sir.

Q. Your labor amounting to \$18,879.40?

A. Yes, sir.

Q. Under the contract now in operation you pay them for brick in the wall on the estimate of the architect?

A. Yes, sir.

Q. Who does the work of erecting the building out there?

A. The Arkansas Brick & Manufacturing Company.

Q. Does the State do it?

A. The State lets the contract to the Company.

Q. And the Company is building?

A. Yes, sir. Under contract with the State.

Q. Do you furnish all the labor in the construction there?

A. They furnish the brick at \$6.00 a thousand and then they lay the brick at \$2.50, that makes \$8.50 a thousand, and the State furnishes the lumber, sand and the labor—the hod carriers.

Q. Then what is the extent of the labor that the Company furnishes?

A. They just furnish the mechanics.

Q. The brick layers?

A. Yes, sir.

Q. And the State all the other material aside from brick?

A. Yes, sir. Stone, lime, cement and sand.

Q. When did you begin to serve as Financial Agent of the Penitentiary?

A. First of February, 1900.

Q. Prior to that time had you individually, or as a member of a company or companies, been interested in contracts for the hire of convicts?

A. Yes, sir.

Q. At that time were you interested in such contracts?

A. No, sir. Not at that time. I sold out all my interest before I was elected.

Q. How long before you were elected?

A. A very short time. Just when I began to consider the proposition of accepting this place I went to work and sold out all my interest in the Arkansas Construction Company.

Q. What contracts were you interested in?

A. One with Mr. Reeves, building a part of the Choc-taw road, and with the same labor we built the Pine Bluff & Western.

Q. Any others?

A. No, sir. I think not at that time.

Q. Have you ever been interested in the hire of convicts on a farm, or leased on a farm?

A. No, sir. I can make a little explanation as to how I got in that. Mr. Reeves had a contract for 300

men and I got a contract on the Choctaw—\$45,000 or \$50,000—and when I went up there to go to work I could not get any hands and came back here and got Mr. Reeves to help me. That is how I come to get into the contract. I got stuck and could not get any labor.

Q. What contract did you say you were interested in a short time before you were elected?

A. The Arkansas Construction Company. I don't remember exactly whether Mr. Reeves had the contract, but I think it was made in the name of the Arkansas Construction Company. That was the only contract with the State. We did different work with them while I was interested.

Q. What firm or contract was it that you sold out a short time before?

A. The Arkansas Construction Company.

Q. Who did you sell out to?

A. To Mr. Reeves. A short time after that they broke up. They closed up a little piece of work they were working on and broke up.

E. T. McCONNELL, being recalled, testified as follows, to-wit:

(BY MR. PATTON)

Q. You were Superintendent when the site for the new Penitentiary was purchased out here?

A. Yes, sir.

Q. Did you perform any office, or was any special

duty assigned to you as to the location of that Penitentiary site?

A. I don't know that there was anything special. The matter was discussed.

Q. I will ask you if you and Judge Hill had any particular duties assigned you as to the location of the site?

A. Judge Hill at a certain time—I could not say when now—was in a Board meeting. He was, without any action being taken by the Board, instructed to assist me—well, I don't know as to the location now—in the work. No, sir. I don't know that I could say that any special appointment was made.

Q. Did you discharge any special duties in regard to the selection out there, whether or not an appointment was made?

A. We went and had a look at the site and made our report. I suppose there was nothing formal about it.

Q. What was that report?

A. I reported it a nice location. The matter was discussed by the Board, and in fact I reckon every member of the Board went and looked at it. They went out there several times. The Governor went out there with me once and Mr. Hull went out there. I think they all went out there at different times.

Q. You reported that it was a favorable sight? Did you not recommend either formally or informally that that site be purchased?

A. I don't know that I did. I was favorable to it if

they were going to locate out there. There was a proposition to sell some property over here in Argenta, including a cypress brake, and I opposed that. We all went over and looked at it two different trips—that is, a majority of the Board did.

Q. Who did that property over in Argenta belong to?

A. I think some ten or twelve parties formed a kind of combination and had options. Sydney Johnson was representing the interest. I think Allen Johnson came before the Board. They had some 4,000 or 5,000 acres over there. It was intended to make a farm of that cypress brake. That was not really considered by the Board, because I don't know that there was a single member of it, after investigation, that was favorable toward it.

Q. I believe you stated that it was your opinion at the time that this site out here should be bought.

A. Yes, sir.

Q. Did you form that opinion after having learned what price the Board paid for that land?

A. I could not answer that positively.

Q. Before forming the opinion did you find out what the land could be bought for? Or was that an element?

A. No, sir. That was something I had not thought of at the time. I might have known the price but I could not say.

Q. I will ask you in a short time after this site was bought if you had a conversation with General Kinsworthy relative to purchasing that site out there?

A. I really don't recollect.

Q. To refresh your memory, weren't you in conversation with him and the price paid was under discussion, and he thought an excessive price was paid, and that you thought too much was paid, and then you ventured the remark in substance that the Penitentiary could have gotten that for nothing, or might have gotten that site for nothing?

A. I probably may have made that remark, considering the trade made. I might have made this remark. I don't know that I did, but I thought it; that Mr. Dickinson, if he had to deliver the brick elsewhere, could very well have donated the land to have saved the price of hauling. I don't recollect any conversation with General Kinsworthy. Of course, I talk with a great many people. They all ask me about these things.

Q. Whether you had this conversation or not, did you think at the time that Mr. Dickinson might have given this site to the Penitentiary; that there would have been any possibility of his giving it?

A. That is a question I could not answer. I had not thought about it in that light. As a matter of policy he might. As a matter of business he probably would not.

Q. Did you at the time think there was any possibility that he might do that?

A. No, sir. I do not know that I did. I may have

made the remark that he probably would have done it on a show down or something like that.

Q. If you did make that remark that was your impression at the time?

A. I suppose so.

Q. In your opinion, as you express it, "on a show down," do you think he would have done that?

A. I don't know. That is something I could not say.

February 21, 1901.

JAMES H. PASCHAL, having been first sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name and residence.

A. J. H. Paschal, Little Rock, Ark.

Q. What business are you in?

A. Assessor for Pulaski County,

Q. What official position have you occupied in this County or this State before this?

A. I was Chancery Clerk for four years previous to this.

Q. Did you ever own any land in the vicinity where the new Penitentiary is now located?

A. Yes, sir.

Q. When did you own this land?

A. I purchased that land in January, 1898.

Q. How far is it from the site of the new Penitentiary?

A. I suppose from the walls it is somewhere in the neighborhood of 500 or 600 yards. But it almost corners with the forty that land is on. The Penitentiary site is up near the middle of the forty.

Q. How much did you pay for that land?

A. I paid \$100 an acre.

Q. Do you still own it?

A. No, sir.

Q. When did you dispose of it?

A. I disposed of it some time last summer.

Q. Sometime after the buildings were erected or were being erected?

A. Yes, sir. The walls were up.

Q. What did you sell it for?

A. I got \$657.50 for five acres.

Q. Are you acquainted with the market price of real estate in that vicinity?

A. Somewhat.

Q. Do you think the price you received was a fair market price at that time?

A. I do. I tried to get more but could not. And the party who purchased—we bought ten acres—and the party who took the other five has never been able to get what I got for it.

Q. What is the nature of that land out there, improved or unimproved?

A. Unimproved.

Q. Under cultivation?

A. No, sir. It is just beyond the city limits—joins the city limits.

J. C. MASSEY, being recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. While you were Financial Agent did you ever receive a proposition from any contractor for the hire of convicts to be worked on the Choctaw road for more than fifty cents per day?

A. Yes, sir. Mr. McConnell and I had a conditional offer from some gentleman who was a bidder in the construction of the road. He offered to put up \$1,000 and take the convicts at seventy-five cents a day. He made that offer to Mr. McConnell. We went together to see Governor Jones about the proposition.

Q. What action did Governor Jones take?

A. At that time the Governor was opposed to working the men on railroads.

Q. What action did the Board take?

A. It never came up before the Board.

Q. Was it ever submitted to any one else besides Governor Jones?

A. Not by me. I reckon they talked it over in a general way, but it never came up officially.

Q. Do you know whether you ever called the attention of this offer to any other member of the Board?

A. I don't remember.

Q. This Board afterwards hired convicts out to work on railroads?

A. Yes, sir.

Q. And during that same administration?

A. Yes, sir.

Q. At what rate per day?

A. Fifty cents.

Q. When was this?

A. I don't remember. At the time or about the time of letting the contract—I think it was a day or two before the letting of the contract.

Q. Letting of which contract?

A. Contract for the construction of the Choctaw railroad. McCarthy & Richardt were the successful bidders.

Q. It must have been sometime during Governor Jones' first administration?

A. No, sir. I don't think—

Q. Gen. Kinsworthy was on the Board at the time, you remember?

A. Possibly it was in the summer before Kinsworthy went out. I think I talked over that matter with Kinsworthy possibly and Secretary of State Hull, but I never brought it before the Board in a regular session.

February 23, 1901.

M. D. L. COOK, having been recalled, testified as follows, to-wit:

(BY MR. PATTON)

Q. Are you working convicts or have you convicts hired out in Lonoke County?

A. The State is working them down there.

Q. What places are you working them?

A. On the Beakley farm. We had a lease on the Gray farm. The lease is now up.

Q. Just on those two places?

A. Yes, sir.

Q. Who owns the Gray place?

A. Mr. Ed. England and John C. England?

Q. Have you ever worked any convicts on a place up there either by hire or by lease, belonging to John Powers?

A. Not that I know of. That is the only two places that I know anything about.

Q. You don't know whether or not the Powers' place is a part of the Beakley place, do you?

A. No, sir. I do not.

Q. These are the only convicts that you are working in Lonoke County?

A. Yes, sir. On the Beakley place now.

Q. Or have worked there since you have been working in the Penitentiary?

A. Yes, sir. They were working the Gray place.

G. B. GREER, having been sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Where do you live?

A. Searcy, White County.

Q. Did you ever own, or were you ever manager, or have in charge some land in Lonoke County?

A. Yes, sir. I have owned land in Lonoke County.

Q. Did you ever sell some land in Lonoke County, having the deed made to Mr. John Powers?

A. Yes, sir.

Q. I will ask you who made the trade or the transaction?

A. D. L. Gray.

Q. Did he tell you who was buying that land or who he was acting as agent for?

A. No, sir. I don't think he told me.

Q. Did he ever tell you that he was buying it for Bud McConnell? That he was acting as agent for Bud McConnell?

A. I don't know that he exactly told me that, but it was discussed among us. It was talked between us but I don't know that Gray especially told me.

Q. Did you get the impression that it was Bud McConnell that was buying the land?

A. Yes, sir.

Q. I will ask you if you ever wrote that letter?

A. Some men wrote to me about the sale of that land and asked me questions about it. That is my handwriting.

Q. And your signature?

A. Yes, sir. This is my answer to his inquiry.

Dear Sir:—Replying to above, I did sell 160 acres of land to D. L. Gray for Bud McConnell and the deed was made to John Powers, of Clarksville. I think it is being worked by convicts. It is in the 16th Section near England, Lonoke County. It was deeded to my son for a home for his wife and children. They sold it, separated, etc. I am,

Very truly,

G. B. GREER.

Greer, Ark., January 12, 1901.

Q. Do you not state in this letter here that you sold this land to D. L. Gray for Bud McConnell?

A. I think that letter states that. That was my impression. That is what I thought.

Q. How did you get that impression?

A. Well, I was a little pushed for money and wanted to sell the land. D. L. Gray, I think, was to give me \$1,000 cash. We met here and I had the deed prepared, and I was going over there and met Mr. McConnell down at Pine Bluff and he directed me who to make that deed to. When we met here with the deed and the abstract, there was some back taxes and I paid that off, and Gray told me, "I can't pay you but half of it." I said, "that was not our trade; I was to have the money for that land." He says, "Bud McConnell furnished the money and he can't let me have but half." I took the half and they gave me a mortgage on the land to secure the note. He said that was the reason he could not pay it.

(BY MR. WILLIAMS.)

Q. I will ask you why you thought it was McConnell the land was bought for?

A. The talk we had together, and he told me that McConnell was to furnish the money to pay for it and he could not furnish but half of it. I didn't get but half.

Q. Who did you put in possession?

A. I delivered the deed and paid no attention to it. The land is cleared up and has been worked by convicts. I have seen the convicts there.

Q. To whom did you make the deed?

A. I think this deed was made in 1896—

Q. I said to whom?

A. To Powers, the old sheriff of Johnson County.

Q. How many convicts have you seen, do you suppose, working at a time?

A. There was three or four plantations worked there. I have seen crowds of them working there.

Q. Is this a part of the Beakley place?

A. They call it the Beakley place.

Q. Near the town of England?

A. Yes, sir. I owned a sixteenth section. I sold one-half to Thompson, and they cleared it up and worked all of it with the convicts.

Q. How many acres did you sell him?

A. Three hundred and twenty acres. I think the letter states 160.

Q. When was this that you saw them working there?

A. I saw them there in the fall. I pass there going to my place about once a month. I can see them from the railroad. They then got the Hunt place down on Clear Lake.

Q. Does Powers live there?

A. No, sir. I think he lives in Johnson County.

(BY MR. PATTON.)

Q. Before Gray told you that McConnell would furnish the money, who did you think was buying it? Did you think before that that McConnell was?

A. No. I had no evidence to suppose he was until we come to get up the deed.

Q. Before he suggested the man in whose name the deed was to be made, who did you think was buying it?

A. I thought Gray was buying it. We went and got Gray's brother-in-law, Whipple, to get up the deed.

Q. Did you ever have any talk with McConnell about the land?

A. No, sir. Not before that. We talked about working all that land around there since. I have asked him about Gray several times since. Gray is not there now. I think he went off to Texarkana or somewhere—sold out.

Q. You say McConnell told you who to make the deed to? Before that time had you any conversation with McConnell about the land?

A. No, sir. I don't think I had.

(BY MR. WILLIAMS.)

Q. Who made the last payment on it?

A. I took a mortgage on the land and put the note in bank and it was paid.

Q. You don't know who paid it?

A. No, sir.

GEORGE R. MANN, having been first duly sworn, testified as follows, to-wit:

(EXAMINED BY MR. GEO. W. WILLIAMS.)

Q. You are an architect, I believe?

A. Yes, sir.

Q. In taking measurements of brick walls how many bricks do you count to the foot?

A. That is a matter of locality to certain extent and the system of measurement. I understand here, and also in Missouri, twenty-two and one-half brick to a foot. That depends entirely upon how the measurement is taken. If a wall is a very plain wall and without any breaks in it, the work of course costs less to lay it up than if it is filled with crooks and turns and breaks. In a great many states, whether a matter of law in the state or not, it is a law of custom that a specific system of measurement to overcome the difference in the cost of laying brick. That question of how many brick is used is a question that is local you might say. All through Missouri it is twenty-two and a half to a foot. I understand it is the same here. I

have no experience with brick work here except just what I have heard.

Q. What is the rule in measuring to ascertain the number of brick in a wall? To measure the width at the base and count it all the way through, or where it tapers do you adopt some other rule?

A. On taper wall my remembrance is that where the wall is tapering, you take the thickness of the base of the wall; that is simply to overcome the extra expense of tapering it.

Q. I am not talking about the expense. I am talking about the rule for ascertaining the number of bricks in a wall?

A. The rule, as I understand, is to take the thickness of the base of the wall throughout. As I say, it is simply a local custom that I know nothing about. That is the rule in Missouri.

Q. Are you conversant with the price of making brick here?

A. No, sir. I have a general idea of what it is worth to make brick, but it is nothing I can swear to.

Q. Are you conversant with the price of laying brick into a wall after they are made?

A. Yes, sir.

Q. What does it cost by the thousand to lay brick?

A. It is worth about \$6.00 a thousand to furnish the mortar. Brick is worth here in town \$8.00 per thousand. Brick in the wall is worth \$14.00.

Q. That is information you have gotten from general talk?

A. No, general practice. As I understand to lay brick here they will charge \$14.00 a thousand if they buy the brick. I know I can buy them at \$8.00, so I figure it is worth \$6.00 to lay them.

Q. Which would you consider the better of two contracts? First, if you were to furnish brick at \$6.00 per thousand and to furnish seven million, or to furnish these brick and then get \$8.50 per thousand, have everything furnished to you in the way of necessities put in the wall and labor, with the exception of the bricklayers?

A. That is a general question that is pretty hard to answer. It depends a great deal as to whether it is on the same piece of work or on separate pieces of work.

Q. Say that it was on one wall?

A. Exactly the same walls?

Q. Say our Penitentiary wall. Suppose I have a contract to build the Penitentiary wall, and first have a contract to sell brick at \$6.00 a thousand. Is that a better contract than putting them in for \$8.50 a thousand and have everything furnished him with the exception of the skilled hands to lay them—and the brick?

A. A brick-layer gets \$5.00 a day. He will average about 2,000 brick. It is pretty hard to answer unless you know the kind of wall you are working on.

Q. Suppose you have the kind of walls those Penitentiary walls are?

A. A brick-layer would not average over 2,000 brick and he gets about \$5.00 a day here. That is my understanding.

Q. What do you think about the two contracts? Which will be the better one there and what would be the difference?

A. I can't see that there would be a great deal of difference between the two contracts.

Q. What is the difference between kiln count and wall count?

A. Kiln count there is about—depends upon the size of the brick. In Missouri it is twenty brick and twenty-two and a half wall measurement. I suppose it is about twenty brick here. May be a little more or little less according to how the brick vary in size.

Q. On measuring a wall where they have pilasters how do you measure them?

A. Measure the face and two sides and call it the front. You measure around the pilaster and give that to the length of the wall. I will illustrate that. With one foot projection and two foot across the face of it, it would be measured on three sides; that is, it would be measured as a wall four foot long and one foot thick. This has nothing to do with the wall behind it. It don't lengthen the wall behind it. It simply measures the pilaster as an independent piece of work.

Q. Then as to the wall under that, I mean back of

the pilaster, do you count just as if you count straight on through and add this to that?

A. You measure the wall and then measure the pilaster and add it to the pilaster. The wall and the pilaster are independent measurements. The walls are measured on corners and measured solid. All corners are measured twice.

(BY MR. PATTON.)

Q. Did you design the walls for the new Penitentiary?

A. Yes, sir. The walls and all the buildings with the exception of the cell building which is being reproduced in accordance with the old design with some immaterial changes.

February 27, 1901.

FRANK W. GIBB, having been sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your residence and occupation?

A. Little Rock. Occupation, architect and superintendent of construction.

Q. Have you performed any office in the construction of the new State Penitentiary?

A. I have.

Q. What was that duty?

A. Architect and superintendent of construction.

Q. What were your duties as architect?

A. To design the buildings.

Q. As superintendent of construction?

A. To see that the plans and specifications were carried out.

Q. Was that all the duty that you had to perform?

A. Also estimate quantities of work done.

Q. Then you estimated the quantities of all work done there, did you, all brick work?

A. I did.

Q. I will ask you if you have not signed all of those estimates upon which warrants have been drawn for construction at the new Penitentiary—that is, the brick work?

A. It was my duty to make the estimates and the payments were to be made once a month. Each month during the progress of the work I made up an estimate and signed it.

Q. Were these estimates signed by you or by the firm name of Mann & Gibb?

A. Signed by Mann & Gibb. Some of them were signed by Frank W. Gibb and George R. Mann. At least the last were.

Q. But you individually made these estimates?

A. Yes, sir.

Q. In your estimate as to the number of brick in a wall, how many do you count per cubic foot?

A. Twenty-two and one half.

Q. What is the shape of the outer wall of the Penitentiary? Is it straight on the outside, or to use a common expression, does it taper from the base to the top?

A. It batters.

Q. Then that is the technical term for what would be commonly expressed as tapering?

A. It is battered or tapered from above the foundation to a point I think about five feet below the top. The face of the wall is not plumb on the outside.

Q. How do you estimate the number of brick in a wall of this kind? What rule do you adopt?

A. Measure the base and multiply by the height. Measure the brick work at its widest projection and multiply by the height.

Q. How wide is this wall at the bottom?

A. Four feet.

Q. How wide at the top?

A. Two feet.

Q. How high is the wall?

A. Twenty feet.

Q. Do you remember the length of this entire wall, clear around?

A. It measures on the inside 500 feet on one side by 400 feet. That would be 1,800 feet around it on the inside—1,832 feet on the outside.

Q. In measuring pilasters or buttresses what rule do you adopt?

A. Measure around the pilaster and multiply by the thickness. Measure the pilaster on the three exposed sides and multiply by the thickness.

Q. This added to the amount of the wall will determine the number of brick in the wall according to measure?

A. It will.

(BY MR. WILLIAMS.)

Q. What are the dimensions of those brick that go in there?

A. I could not give you the exact dimensions. Brick vary slightly. Approximately four and one-eighth inches in width, two and one-fourth inches in thickness and nine and one-fourth inches in length. Each different manufacturer of machines makes different sized molds. There is no standard sized brick.

Q. How many bricks are in this wall out there?

A. I could not tell you exactly. Approximately 4,300,000.

Q. Do you know how many are in the buildings?

A. The difference between 4,300,000 and 6,500,000, approximately. That may vary from the estimates I have given 100,000. I don't now remember what the estimates were.

(BY MR. PATTON.)

Q. What grade of brick was used in the construction of the buildings and outer wall?

A. Very good brick.

Q. I mean by that, were they ordinary brick or pressed brick?

A. The larger per cent were pressed brick—that is, there were more pressed brick used than ordinary brick.

Q. What difference was made in construction—that is, where you used pressed brick and where you didn't, what part of the wall did you use pressed brick and what part ordinary brick?

A. There is no difference in the value of pressed brick and ordinary brick. The pressed brick were used with the ordinary brick, but the exterior face of the walls were laid up with selected press brick selected for shape and color. The difference between pressed brick and common brick is so slight that we pay no attention to that difference.

Q. They can be manufactured as cheaply as ordinary brick?

A. Yes, sir. But the selected pressed brick—that is, pressed brick selected for their color, are worth more money.

March 4th, 1901.

A. M. BAILEY, testified as follows, to-wit: •

(BY MR. PATTON.)

Q. State your name, residence and occupation?

A. A. M. Bailey, residence 1611 West Second Street; my occupation is a builder.

Q. How long have you been engaged as a builder or contractor?

A. I have been connected with contracting since 1876 with the exception of two years that I operated a mill, and then that was in the manufacture of materials for building.

Q. What nature of contracts do you deal with principally?

A. I take all. I take the building complete, including brick, plastering and all materials.

Q. What buildings here of any importance or elsewhere have you been engaged in the construction of?

A. In the firm of Harding & Bailey I did about \$25,000 worth of work in the State House here. Also took a \$11,000 contract from the State of Arkansas to build the Normal Branch at Pine Bluff. I have built the Peabody School building from the ground up. I have built the office building for the school board. Residences and buildings of various kinds I have put up here.

Q. Are you familiar with the rules of wall measurement and the measurement of masonry that is in use in this locality?

A. Yes, sir.

Q. I will ask you what is the prevailing rule as to the number of brick in a wall, mason's measurement?

A. The rule of the City of Little Rock for the last thirty years has been eighteen brick to the cubic foot. While it will not fill out twelve inches in height—it will not give more than eleven inches—but it will give you a one-twelfth in the length of the wall, which equalizes it.

Q. You say this rule has been the universal practice in the City for the last thirty years?

A. I have never known any other rule. I have never figured any different at any time, unless where we figure press brick. Our rule of measurement is nine, twelve, eighteen; twelve brick nine inch wall, eighteen brick for twelve inch.

Q. What is a battered wall?

A. A wall narrower at one point than at another. No matter whether there is only the difference of an inch it is a battered wall.

Q. What rule is customary for measuring brick in a battered wall?

A. You take it and measure it into cubic feet the same as you would anything else.

Q. How do you determine the average thickness of a battered wall?

A. Multiply the greater and the lesser together and then get the half of it.

Q. With a battered wall four feet at the base and two feet at the top, what would you estimate the thickness of that wall to be?

A. Four and two are six—three feet in average.

Q. You would estimate that then as a wall three feet thick?

A. Yes, sir. Unless it was somewhat complicated. There are some places you could not use that. With a long stretch of wall that is the way we go about it.

Q. What is the size of the ordinary brick used here in the construction of buildings?

A. I think about two and three-eighths in thickness, about four and one-fourth in width and about eight and three-eighths, if I am not mistaken, in length.

Q. How many actual brick without mortar between them does it take to make a cubic foot?

A. I don't know that I ever measured that. But a rough calculation I would say about twenty, because the three joints of mortar takes about one-quarter of an inch to three-eighths of an inch.

Q. I wish you would explain the difference between kiln count and wall measurement in brick.

A. There is not any difference at all. If we are basing our figures on eighteen brick to a foot it would make no material difference how much the kiln count would be. Kiln count is just simply getting at a correct account of the brick that the kiln sends to a builder without any division, because we can go to work and tell how many brick in a wagon and after you get your wagons straight you can very readily tell if they are making any mistake in counting.

Q. What is a pilaster?

A. A projection from the main building that may be four, six or eight inches, according to the notion of the contractor, or may be greater. It will probably have a face of thirteen, eighteen or twenty-two inches.

Q. What rule do you adopt for measuring brick in pilasters?

A. I take a pilaster separate from the main wall. I measure my wall complete in itself all around the building, and the amount of pilasters. If I had twenty pilasters that were four inches and thirteen inch face I would call it twenty feet and multiply that by its height, and then multiply by seven, allowing seven brick to a foot.

Q. With a pilaster of any common dimensions, what general rule is customary in measurement?

A. If there were five pilasters on the side of a building I would measure them separately.

Q. The rule for calculating the number of brick in a pilaster is the same as that of the wall?

A. Yes, sir. Without doing that I would not be able to know how many brick I was getting in the building.

Q. Have you seen these outer walls of the new Penitentiary?

A. But once. I went out there on the afternoon of the laying of the corner stone of the new State House, and I probably was not gone more than three-quarters of an hour. I just got a casual look at it.

Q. What kind of a wall would you call that outer wall?

A. Battered wall with pilasters. And the pilasters vary in size as they go up. You might term them a buttress.

Q. They slope like the wall or about the same angle of the wall, do they not?

A. I would not be sure but what they may have a greater. In a case of that kind these pilasters are generally measured separately, because there are circumstances where you can't get at it and throw it into cubic contents.

Q. You were subpoenaed to appear before this Committee?

A. Yes, sir. By a deputy sheriff.

Q. Subpoena served on you to-day?

A. Yes, sir.

G. A. LEIPER, having been first duly sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name, residence and occupation.

A. G. A. Leiper, Little Rock, brick manufacturer.

Q. How long have you been in the brick manufacturing business?

A. About seventeen years. I was in the employ of the Massachusetts Penitentiary for nine years, and I have been for myself since 1893.

Q. Have you ever had any experience as a contractor or builder?

A. I have had some as a builder. I built the addition to the Insane Asylum.

Q. Are you familiar with the rules adopted in this vicinity for estimating the number of brick in a wall?

A. Somewhat. I have had some practical experience right recently. I know the rule for calculating the number of brick in a wall.

Q. According to your estimation how many brick are ordinarily estimated to the cubic foot?

A. Eighteen. That is what the contractors estimate, I know.

Q. Did you ever know of this rule being deviated from since you have been connected with this kind of business in this city?

A. No, sir.

Q. Do you know what a battered wall is?

A. Yes, sir.

Q. How would you describe a battered wall?

A. A battered wall is one whose base is thicker than the top.

Q. What rule is adopted for calculating the number of brick in a battered wall?

A. The actual brick would be taking the two extremes adding them together and multiplying.

Q. Do you understand whether or not that is the customary practice of measuring brick in a battered wall?

A. I do not.

Q. You say you are a manufacturer of brick?

A. Yes, sir.

Q. Did the Penitentiary Board ever advertise or offer to take bids for the furnishing of brick or material for the construction of the new Penitentiary that you know of?

A. No, sir.

Q. Do you know whether anybody ever volunteered that they would furnish material or brick to them for any price?

A. No, sir. Not on the Penitentiary building. Had no opportunity. I watched the papers very closely and there was no advertisement.

Q. Did you ever seek an opportunity to try to find out whether they were or not?

A. The contract was let and construction begun before I knew it.

Q. You say you watched very closely?

A. I read both of our papers very closely and also seek information from architects.

Q. What is the difference between kiln count and wall measurement in the estimating of brick?

A. There is about twenty-five per cent in solid work, and if there is many openings it is greater than that.

Q. Twenty-five per cent in which way?

A. In favor of the wall measurement. In other words, wall measurement under the rule is twenty-two and one-half brick to a cubic foot and the other is eighteen, and if there is openings, in wall measurements the openings are counted as if it was solid.

Q. What is the size of an ordinary brick?

A. Eight and a half by four and three-fourths by two and three-eighths inches. That is the size of our brick.

(BY MR. WILLIAMS.)

Q. With common brick at six dollars per thousand and face brick at \$11.00 per thousand and all the material and common labor furnished you, excepting brick laborers, what would be a fair and just price for those brick laid in the walls?

A. When you speak of face brick and laid up in face style, face brick manner, they are buttered, the joints are buttered and laid up very closely. But if laid up in common brick style it would cost no more to lay them than common brick; and a brick layer on a wall such as that out there would average—he should average—at least 3,000 per day of ten hours work. I had an experience recently where a contractor laid more than that foundation. Three thousand brick would be a safe estimate. The brick layer would be worth \$4.50. That would be actual cost for laying \$1.50 a thousand. That would be the actual cost with everything furnished. That does not include foreman's hire nor the man's property.

Q. Then if a man had a contract to sell brick kiln count at \$6.00 per thousand, would it or not be more advantageous for him to have a contract in which all materials and all labor was furnished him except the skilled brick layers at \$2.50 additional per thousand?

A. There would be an advantage in taking the wall measurement on the brick.

Q. Have you any method of calculating what difference that would be?

A. I just stated it would be twenty-five per cent in favor of the wall measurement. That is in solid wall. In the openings that would be additional, unless it is an opening of less (more) than ten square feet.

Q. Have you examined the walls of the new Penitentiary?

A. Yes, sir.

Q. In the class of work done there, how many brick can be laid per day of ten hours?

A. Three thousand.

Q. At the ruling price, what would be the cost per thousand for brick laid in the wall?

A. One dollar and fifty cents would be the cost. They get \$4.50 a day and they lay 3,000.

Q. What would you consider a fair profit to the contractor to be added to the above cost?

A. There is a great many things to be considered in a matter of that kind—the time he was kept there and a great many things, so it would be hard for me to answer that question.

Q. Do you consider the State was being charged justly at \$8.50 per thousand for common and \$13.50 for face brick in the wall, wall measurement, the State to furnish all material and all labor with the exception of the skilled brick layer?

A. You mean such brick as they have on the outside of the wall there?

Q. Yes.

A. I do not.

Q. Can you state why?

A. Yes, sir. There is no selected face brick. There is some face brick in the wall, but I mean there is no selected face brick put in the wall. Those brick are just the same in that wall as we furnish builders around here anywhere—merchantable brick. We deliver a man 50,000 brick and he will put a laborer there and pick out a few brick and put on the outside and pays no addition for it. And from the looks of that work it was the same thing.

Q. Suppose you would take a wall that was four feet thick at the base, twenty feet high and two feet thick on the top, and sloping gradually from the four to the two feet, how many brick would you calculate to be in a cubic foot from bottom to top?

A. I would calculate that at an average of three feet.

Q. Just give the figures. How many brick would there be?

A. There would be fifty-four brick in a square foot of face, a foot wide and a foot high.

Q. From bottom to top you would calculate that many brick in there?

A. Yes, sir. On an average.

Q. What is the rule in regard to measuring pilasters?

A. In regard to pilasters I am not familiar.

(BY SENATOR BUCKNER.)

Q. Is there pilaster work on this wall at the Penitentiary?

A. Yes, sir.

Q. Does pilaster work cost more per thousand to lay it than common wall?

A. Yes, sir. Any offset costs more. You have got to run up a true corner on both.

Q. Can the same skilled mason lay as many thousand where there is pilaster work as he can if there is only a plain wall?

A. No, sir. But in my answer about laying 3,000 brick per man in that wall I considered that pilaster work.

Q. I asked you, can a skilled mason lay as many brick in a day where the work is pilaster as he can in a plain wall?

A. No, sir.

(BY MR. WILLIAMS.)

Q. But in explanation to this question do you mean to say that when you stated a skilled brick mason could lay 3,000 brick a day, you took into consideration the pilasters?

A. Yes, sir.

March 6, 1901.

GEO. R. MANN, being recalled, testified as follows,
to-wit:

(BY MR. PATTON.)

Q. You have testified before this Committee before?

A. Yes, sir.

Q. Did you design and furnish the plans for the new Penitentiary building?

A. Yes, sir. I made the drawings.

Q. What buildings or structures did you design out there?

A. I made the drawings for the power house, for the hospital building and dining room building, for the walls and office building. I had nothing to do personally with making the drawings of the cell house. Those drawings have been made but I had nothing personally to do with it.

Q. What compensation did you receive for this work?

A. The arrangement was first made for us to measure up all the old buildings, which was done, and drawings made of the old buildings, for which we were to receive \$500.00. Then they wanted us to take charge of the old buildings, but I refused to have anything to do with reproducing these buildings in the shape they were. Then they wanted me to make a proposition and I agreed to make the drawings for the wall and superintend the erection of it for one and one-half per cent. The wall being, of course, a very small drawing, was a repetition all the time, and it was hardly fair to take into consideration the

whole wall in fixing the fee. I would design the buildings, for four per cent.

Q. This stipulated per cent was what? The cost of the building?

A. Yes, sir.

Q. How did you estimate that cost?

A. I have had nothing to do with that part of it. I don't know how the cost has been arrived at.

Q. Have you ever been paid?

A. Mr. Gibb has received the pay and a certain portion of it he has turned over to me.

Q. Do you know how the cost was arrived at?

A. No, sir. I do not.

Q. Do you know how much has been paid to you or to your firm?

A. I don't know the exact amount.

Q. Do you know approximately how much it was?

A. I think about \$3,000.

Q. That is what per cent of the work done?

A. One and one-half per cent of the wall and four per cent of that on the buildings themselves.

Q. Do you know what the relative cost of the walls and the buildings were?

A. No, I do not. I never figured that work up myself. That was turned over to Mr. Gibb before the work was finished and before any figuring was done. I don't know what it amounts to.

Q. What buildings remain yet to be constructed from your designs?

A. The hospital building is under construction, and is partially constructed, the office building is partially constructed, and the foundation only is in for the cell building.

Q. Have you ever received pay on these buildings that have been partially constructed?

A. I suppose it has been paid for the plans, but the supervision of the work is still going on, and will until they are finished.

Q. What did you estimate the entire cost of those buildings and this wall to be?

A. I never made an estimate. I have no idea.

Q. You made the plans and specifications?

A. Yes, sir. But I never made an estimate. I was never asked to make an estimate.

Q. Did you ever estimate what your total fees would be?

A. No, sir.

Q. Relatively speaking, has there been more or less than half of the building completed at the present?

A. I should say outside of the wall about half. The architect's fees, of course, are divided in so much for making drawings and so much for supervision. Of course making drawings is very much the larger proportion of it.

Q. Was it your duty under this contract that you should superintend the construction or supervise it?

A. Yes, sir.

Q. At this stipulated per cent?

A. Yes, sir.

Q. You didn't attend to that personally?

A. I did up until July when I was taken sick. I was sick all the summer, and then by the time I was well enough to do any work I had made a different agreement with Mr. Gibb and had quit any local work outside of the capitol. Since then I have been out there a number of times but not as architect, more as an adviser to him. Some things would turn up and he would want to know the best way to do it and I would go out with him.

Q. You said, I believe, that it was about \$3,000?

A. I could not say exactly. I think something like that.

Q. You mean that is the total amount paid, or amount paid you individually?

A. No, sir. Total amount paid. It may be something more than that. It is near that as I understand it. I have never seen the bill and paid very little attention to it.

Q. Did you enter into a written contract with the Board for this work on the Penitentiary?

A. I don't think so. I could not answer that exactly as to whether Mr. Gibb ever had a written arrangement with them or not. It is my impression that it was nothing more than a proposition made to Judge Hill and then afterwards accepted by the Board. Judge Hill came to me while I was laying the foundation of the capitol build-

ing. I submitted him a statement of what I would do the work for and it was afterwards accepted.

Q. You have no recollection of ever signing any contract?

A. No, sir. I never did myself.

Q. Nor authorized any one else to sign any for you?

A. No, sir.

March 9th, 1901.

C. W. CLARK, having been first duly sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name, residence and occupation?

A. C. W. Clark, Little Rock. I am a builder and brick manufacturer.

Q. You say you are a builder? What character or class of buildings are you accustomed to putting up?

A. Brick usually. I built the Lunatic Asylum in 1882, Blind School in 1886; in 1893 built the court house at Texarkana; 1897 court house at Forest City, and a little farther back I built the court house at Jonesboro.

Q. How long have you been engaged in this business?

A. About thirty years.

Q. Are you familiar with the rules prevailing in this locality for measuring buildings—the number of brick in a wall—that is, as to calculating the number of brick in a wall?

A. Yes, sir. I guess so. I know how I do it.

Q. What is the customary number of brick to be calculated to a cubic foot in a wall?

A. Eighteen.

Q. So far as your information extends, is that an almost universal practice in this community?

A. So far as I know.

Q. Is that the rule that you have always adopted in these buildings that you spoke of having put up?

A. Yes, sir.

Q. Are you familiar with the rule for calculating brick in a battered wall?

A. I know how I do it.

Q. Are you familiar with the customary practice, so far as your observation goes?

A. I could not say how anybody else would. I know how I would.

Q. I will ask you how you do it?

A. If the wall is thinner at the top I would put the two together and take half of that, provided the batter was all the way from the bottom to the top. If not, then it would have to be two measurements.

Q. That is the rule that you have always employed?

A. Yes, sir.

Q. Do you know of any one else ever adopting any other method of calculation in the wall of any magnitude?

A. No, sir. I do not know that I have.

Q. Don't you know that other contractors have adopted this same rule for measuring battered wall—that some others have?

A. I should think so. I don't know how else they would arrive at the quantity of brick in the wall.

Q. Do you know whether or not prior to the time that they began work on this Penitentiary building that the Board or any of the officials of the Penitentiary ever advertised for bids for the furnishing of material and construction out there?

A. If they did I never heard of it.

Q. You say you are a brick manufacturer and a contractor here?

A. Yes, sir.

Q. Were you not reasonably alert to ascertain whether or not such propositions had been submitted?

A. Yes, sir.

Q. You make that your business?

A. Yes, sir.

Q. If such propositions had been submitted you would in all probability have heard of them?

A. I think so.

(BY MR. WILLIAMS.)

Q. Have you seen the new Penitentiary walls?

A. I have.

Q. What is the class of that work?

A. I think it is a fairly good looking job of common brick work.

Q. When you say "common brick" what do you mean?

A. I mean common brick, not pressed brick. The wall is perhaps built of pressed brick, but a common job of brick laying can be done with pressed brick, not a pressed brick job. Pressed brick is usually with a small mortar joint of white mortar. Common brick work is spread work with a joint of anywhere from three-eighths of an inch to half an inch or five-eighths.

Q. What is face brick? Make the distinction between that and ordinary brick.

A. It is a brick of uniform size, true corners and edges and uniform color.

Q. From your inspection of the wall, what would you say that wall was built of? Face brick or not?

A. No, sir. I should not think it was from what I have seen of the wall. Of course I never inspected the wall, but from a casual observation I should think it was just common ordinary brick work.

Q. Do you know the average cost of the ingredients per cubic foot or yard that enter into the building of a brick wall, outside of the cost of the brick?

A. Cost about \$1.00 a thousand for lime, sand and water to lay one thousand brick.

Q. What is the prevailing price of brick here by the thousand, and has been for some time?

A. Now worth \$8.00 a thousand delivered at the building. About a year or year and a half ago they were selling for \$6.00.

Q. Do you know what distance apart the pilasters are out there on that wall?

A. No, sir.

Q. When you spoke about the number of bricks that were put in there per cubic foot awhile ago, did you mean wall measurement?

A. Eighteen brick will lay a cubic foot in the wall.

(BY MR. PATTON.)

Q. You say you have seen this wall out there—the outer wall?

A. Yes, sir.

Q. Is that what you would describe as a battered wall with pilasters?

A. Yes, sir.

Q. Are you familiar with the rule adopted here for measuring the contents—the number of brick in a pilaster?

A. I know how I do it.

Q. How would you measure it?

A. I would measure the brick that projects over the face of the wall.

Q. Did you ever hear of any other rule being employed in this vicinity?

A. No, sir.

Q. How many brick can a skilled brick layer lay per day in work like that outer wall of the Penitentiary?

A. He ought to average 2,500 brick in a day of ten hours.

Q. What is the prevailing price paid for labor of that class?

A. The prevailing wages here for the past year or two has been forty-five cents an hour. In some instances fifty cents.

Q. Mr. Williams asked you about the cost of mortar per thousand. I will ask you what additional cost in labor is there in addition to the skilled labor?

A. About fifty cents a thousand for brick. Depends altogether on wages.

Q. I mean at prevailing prices?

A. Yes, sir.

FRANK W. GIBB, having been recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. You have testified here before?

A. Yes, sir.

Q. About the time they began work, or before they began work on the construction of the new Penitentiary, were you and Mr. Mann not associated as partners in the architectural business?

A. We were.

Q. I will ask if you or Mr. Mann or your firm furnished plans and specifications for the walls and buildings out there?

A. We did.

Q. On what terms?

A. We were to receive four per cent for the buildings and one and one-half per cent for the enclosing walls.

Q. You mean four per cent of the cost?

A. Total cost of the buildings.

Q. Who has estimated the cost of the buildings?

A. I have.

Q. How much did you estimate the cost of the wall to be?

A. That is a matter of record and I have no copy of it with me.

Q. Do you remember what it was approximately—the value of the wall?

A. Something like \$43,000.

Q. How many buildings have been put up within the walls at the present date?

A. Complete?

Q. Yes.

A. Two complete.

Q. What ones are in process of construction?

A. The hospital and cell building, and also the office building.

Q. Relatively speaking, has there been more or less than half of the work on buildings of the Penitentiary done? I mean the buildings within the wall?

A. I would answer that by saying about half.

Q. When you and Mr. Mann made the plans and specifications, did you estimate the total cost of all this work when complete?

A. We did not.

Q. How much have you received as compensation for these plans and specifications and this supervision of the work up to date?

A. Three thousand five hundred and fifteen dollars.

Q. Does that pay you up to date or is there some part yet remaining unpaid?

A. We have laid some brick out there since and put on some roofing since. Approximately it does.

Q. Have you ever estimated approximately how much you will receive when all these buildings shall have been completed?

A. I did not.

Q. Do you have any idea of what it will amount to?

A. I could make up an estimate of it.

Q. You mean that you could make an accurate estimate of it in some time, or that you could estimate it now—a rough estimate?

A. I mean in a day's time I could make an estimate.

Q. What class of work do you consider the work that has been done there?

A. I consider it good work.

Q. What class of brick has been laid—that is, on the outside; that is, the face brick?

A. They are brick of reasonably uniform color.

Q. Has the work been such as is usually done in laying press brick work?

A. It has not.

Q. In what way does it differ?

A. It is not as uniform in color.

Q. I mean the work?

A. The class of work is not what is ordinarily done on press brick fronts.

Q. In what way does it differ?

A. The brick are not laid with the accuracy and with the thin mortar, and with the careful selection that is made in press brick fronts.

Q. What kind of a foundation does that wall rest upon?

A. Foundation of brick.

Q. What kind of a foundation for the buildings?

A. Brick.

Q. What grade of brick is used on the inner walls—I mean between the faces—the filling of the wall?

A. The brick are nearly all hard brick. Nearly all the brick used in walls are hard brick.

Q. What is a bat?

A. A bat is a broken brick.

Q. Is it a fact or is it not a fact that you used bats in the construction of this wall in the filling?

A. There are very few half brick or bats in the work. I have never seen a wall constructed that had as few broken brick as in this work.

Q. When bats are used, or broken brick, is it not a fact that it requires more mortar to lay them?

A. It is.

(BY MR. WILLIAMS.)

Q. What did you estimate the cost of the outer walls to be?

A. My recollection is that it was something like 4,300,000 and putting this brick at \$10.00 a thousand would be \$43,000.

Q. For the outer wall?

A. Yes, sir.

Q. What is the number of pilasters that are on these walls and what are their dimensions?

A. I would have to refer to the plans to tell that.

Q. You stated awhile ago that the outer walls and also the walls of the buildings were on brick foundations? Where were those brick that went into the foundation procured?

A. From the Arkansas Brick & Manufacturing Company.

Q. How many bricks were used in completing walls on the inside—that is, buildings inside of the Penitentiary?

A. About 2,200,000.

Q. What, then, is the estimated cost of that?

A. Brick work alone? I think those brick cost the State about—actual cost—\$10.50 or \$11.00 per thousand.

Q. You mean laid in the wall?

A. Yes, sir.

Q. What do you count as the total of the cost of everything that entered into the wall, and also as to the buildings inside of the wall?

A. Somewhere in the neighborhood of \$80,000.

Q. What is the aggregate cost of the outer walls?

A. Something like \$43,000 or \$45,000.

Q. Does that comprehend every element of cost and expenditure that entered into the building of the wall?

A. It does.

Q. Did you count in that the cost of the labor that the State furnished and the lime and the sand and everything of that sort?

A. It does. I saw the balance sheet gotten up by Mr. Moore, the official clerk, and I was asked to see if it was complete, and it amounted to \$84,000. But that included \$5,000 for land. In that statement was the several bills for lime and also for convicts. So many men had been employed. And it was my intention in making out my bill to charge on the basis of the cost of this work to the State. I expected to be paid not only four per cent on the brick but on the labor and mortar and everything.

Q. What would have been the cost to the State for building the outer wall if she had simply paid for the brick at \$6.00 a thousand and furnished everything else? What would she have had to pay out?

A. I could not answer that question. I would have to figure on it. I could make an estimate of what they could do with convict labor. Convict labor in laying

brick has been used advantageously. At the Insane Asylum nearly all of the brick layers were convicts. I will say this: I don't think the State could have gotten the work done any cheaper than it has been done.

Q. Suppose the State had bought the brick at \$6.00 per thousand and then had had to hire skilled brick layers at \$4.50 per day? What would have been the difference in her then carrying out that kind of a contract and carrying out the contract under the second contract with these parties?

A. I believe the result would have been about the same. I think that the contract with the State—that is, with Dickinson, is a reasonable contract. I mean that the price that the State is paying Dickinson is not out of reason considering what brick is worth now.

Q. In that connection, how does the price of brick and brick work compare now with what it did a year or year and a half ago?

A. Brick were \$1.50 to \$2.00 per thousand cheaper, and masons received ten cents per hour less than they now receive.

Q. Was your estimate made awhile ago based upon the present conditions of brick and labor, or conditions as they existed a year and a half ago?

A. Conditions as they now exist.

T. T. JOHNSON, having been sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name, residence and occupation.

A. T. T. Johnson, Little Rock. Buyer for the Fones Brothers Hardware Company, manufacturers of Brick at Malvern, Arkansas.

Q. How long have you been engaged in the manufacture of brick?

A. Since 1889.

Q. Have you ever had any experience as a contractor or builder?

A. In a limited way. I have been interested in contracts for different buildings.

Q. I will ask you if you are familiar with the rule established here as to estimating the number of brick in a wall in a cubic foot?

A. Yes, sir. I am on that part of the work. I am not familiar with the actual construction, Eighteen.

Q. Have you ever known this rule of calculation to be deviated from here in ordinary work of brick construction?

A. Can't call one to mind. Usually contracts here have all been figured by the contractors as a rule of actual measurement of eighteen brick to the foot.

Q. Do you know what a battered wall is?

A. Yes, sir.

Q. Are you familiar with the rule (general rule) for calculating the number of brick in a battered wall?

A. I know what I have figured, in connection with my partner, who is a practical builder. In figuring a battered wall we would figure it from about one-half and from on the top again in two measurements. To make that a little more plain, another way to figure that would be to figure the width at the base and at the top the entire height and take one-half of it.

Q. For example, a wall four feet thick at the bottom and two feet at the top, you would calculate that as an average thickness of three feet?

A. Yes, sir.

(BY MR. WILLIAMS.)

Q. The State had a contract with certain parties to furnish brick, kiln count, at \$6.00 per thousand, for the purpose of building the new Penitentiary, consisting of the walls and buildings on the inside of the walls, in which the State was to build the walls and buildings itself. This contract was changed and another one substituted by the terms of which the party who was to furnish the brick was to get at the rate of \$8.50 per thousand wall count, for plain brick and \$10.50 for press brick, the State to furnish all material and all labor with the exception of the skilled brick layers. Now, will you please tell me which was the better contract of the two, and what the difference would be in dollars and cents on about seven million of brick?

A. I don't know that I can answer your question. At the prevailing price of brick layers' labor—prevailing wages

paid brick layers, and other materials furnished—I am satisfied \$6.00 a thousand would have been a better contract for the State. Now, in explanation of that we would figure in this way: In figuring wall measure it is based on twenty-two and one-half brick to the cubic foot; there is no deductions made for openings at all. It is solid measure right straight all the way through, and that is an actual gain to the brick layer of twenty-five per cent. Now, you take \$6.00 for the brick actual count and then the other \$2.50 for laying in the wall on brick mason's measurement adding your gain of twenty-five per cent would give you \$3.12½ for laying them in the walls and added to the \$6.00 would make \$9.12½. Now if the price was \$8.50 per thousand in the wall you would add the twenty-five per cent to the \$8.50, which would make the price \$10.62½ in the wall. You would be paying twenty-five per cent advance on the labor and also on the brick themselves.

Q. Then what do you consider that the brick cost the State per thousand in that way—the brick and the labor after they were laid in?

A. If the contract is \$8.50 wall measure they were costing the State \$10.62½ actual count. The old way, before contractors got to be so close, it was customary for brick layers to figure wall measure, but they expected to and did furnish all common labor and material necessary to get them in the wall. In this instance, as I understand your question, all the material and labor, except the skilled

labor, has been furnished by the State. On that basis we would count, actual count, that those brick were costing \$12.50 or \$13.00 in the wall.

Q. What would you estimate the brick at \$6.00 per thousand to cost the State where she simply bought them and put them in the walls herself.

A. Of course I am not familiar with their facilities for getting water and sand; that would cost a little more than in town. The State would have laid these brick in the wall about \$8.50 actual count—that is, figuring with a contractor's profit in there. And that is the fairer way to figure it. The State might reduce that on the labor if she has got skilled labor to lay the brick.

Q. What would you consider a fair profit to the contractor to be added to that cost of the brick and mason's labor?

A. I have added it in there.

Q. I believe you answered that they cost \$12.50 or \$13.00 a thousand?

A. Taking actual count and adding in the market price for lime, cement, sand and water, etc.

Q. Do you consider the State is being charged justly, \$8.50 for common and \$13.50 per thousand for face brick in the wall, wall measure, when the contractor furnishes only the skilled labor and the brick, and the State furnishes all other labor and material, the price of common brick \$6.00 per thousand and face brick \$11.00 a thousand?

A. I would say it was paying a large price—in excess of ruling prices.

Q. How many brick are measured in a cubic foot of mason's measurement?

A. Twenty-two and a half brick.

Q. What amount in excess, under the second contract, would the State, according to your computation, pay for the brick over what she would have paid had she bought them at \$6.00 per thousand and put them in herself?

A. In my former answer I gave the cost \$8.50 per thousand actual measure. Under the present contract, which is wall measure, she is paying \$10.62½ per thousand and in place of \$8.50, an excess of \$2.12½ per thousand.

(BY MR. PATTON.)

Q. What gain would a contractor make in a wall four feet at the base and two feet at the top and twenty feet high, over your method of calculation if he estimated it four feet at the bottom and counted it as if it were a solid wall to the top?

A. He would gain exactly one foot of wall.

Q. In a wall twenty foot high how much would that amount to?

A. Twenty feet.

Q. And in a wall 1,800 feet long?

A. He would gain 36,000 feet.

Q. Twenty-two and a half brick to the foot what would be his gain?

A. Eight hundred and ten thousand brick.

Q. At \$8.50 per thousand, what would it amount to?

A. Six thousand eight hundred and eighty-five dollars.

March 13, 1901.

WILLIAM CHILDERS, having been first sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name, residence and occupation?

A. William Childers, Imboden, Lawrence County, Arkansas. I am now in the hotel and real estate business.

Q. Have you ever been connected with the building of the new State Capitol?

A. Yes, sir. I was up there seven or eight months.

Q. What position did you hold and when were you employed?

A. My business was to get rock and sand for the foundation of the new State House. I can't tell you just when I was employed. I reckon it was sometime in the winter.

Q. How long were you employed?

A. I think seven or eight months.

Q. In the discharge of your duties were you in and about the Penitentiary quite a good deal?

A. I boarded there.

Q. The new Capitol is being built within the Penitentiary walls?

A. Yes, sir. I boarded at the Penitentiary all the time and slept there.

Q. While you were employed there did Judge Frank Hill, Commissioner of Agriculture, ever room or board there?

A. All the time I was there except when he was off on a trip. I don't suppose he ever missed a meal unless he took one down town at noon.

Q. He boarded there the greater part of the time, did he?

A. All the time except when he was off. He had a nice room.

Q. Did he receive any other services there that you know of at the hands of the Penitentiary?

A. He was just like the balance of us. He was waited on by the negroes, and shaved two or three times a week.

Q. Get his washing?

A. Yes, sir. His underclothes. I guess he sent the balance to the laundry like I did.

Q. While you were there do you know whether or not Arthur Niell kept a horse there?

A. Yes, sir. There was a little sorrel horse they said belonged to Arthur, about all the time I was there.

Q. He was stabled and boarded there in the Penitentiary?

A. Yes, sir.

Q. Do you know whether or not any other Penitentiary officials kept their horses there?

A. Mr. Hull had his there a good deal of the time, and Mr. McConnell kept his horse there. He had a fine horse that I understood belonged to him individually.

Q. While you were employed there did you ever know of any one having a convict employed as a domestic servant out in that neighborhood?

A. There was a negro man came in there every night pretty near all the time I was there and said he was working for Dickinson. He was a trusty and he worked out, and Mr. Bill Reeves used to have a little negro that he worked, so I understood. I don't know whether he brought him from his railroad camps or not.

Q. Do you know of any other?

A. Yes, sir. I know of a negro man cooking for an old lady—Mrs. Miller, I think—Mrs. James R. Miller. There was a negro man stayed there all the time I was out there. He was, they said, a pretty long term negro. I have seen him there frequently in passing. I 'seen him there in the yard and the other negroes that were with me said he belonged to the Penitentiary. He had on a citizens suit.

(BY SENATOR BUCKNER.)

Q. What use was that horse of Arthur Niell's put to?

A. None at all. I understand he ran a little race and then they tried to work him?

Q. Did they work him?

A. Yes, sir. They worked him a little.

Q. The other horse was Mr. McConnell's, and the one belonging to Mr. Hull. How much of the time did Mr. Hull's horse stay there?

A. He was not there a great deal of time. Every time he got lame he would send him out there to take care of him.

Q. Do you know whether the negro that worked with Dickinson was a part of the convicts that he had under a contract with the State or not?

A. No, sir. I don't. I know he would come in and sleep in the Pen.

Q. Do you know the terms upon which the other negroes worked for Mr. Reeves and Mrs. Miller?

A. No, sir. Reeves had negroes working on the railroad, and it might have been that he took him from the camp.

Q. Did you pay board at the Penitentiary?

A. Not a cent. It was understood when I was hired that I was to get my meals—so much a month and my board.

(BY MR. PATTON.)

Q. Do you know anything about Mr. McConnell's habits as to sobriety?

A. Yes, sir. I think I know a little about it.

Q. I wish you would state what his habits were?

A. Every two or three evenings out of a week Bud would come in pretty full. He was very clever to me, but he drank too much,

Q. You are a pretty good judge of when a man is full?

A. I think I am.

S. P. TURNER, having been sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your residence and occupation, official position that you hold?

A. I reside here in the city, and am the Secretary and Purchasing Agent of the State Charitable Board, or Board of Trustees, rather, of the Charitable Institutions.

Q. As Purchasing Agent of the Charitable Institutions is it not your duty to buy all the supplies and materials for these institutions, or contract for them?

A. It is the custom in matters of this kind that the Board buy all of these supplies, and the law, as I understand it, requires the officer of the Board, who is the Secretary, to advertise for bids for supplies and submit them with any recommendations that he may see fit to the Board. There is only one way of purchasing supplies, and that is if you advertise for bids and they are submitted to me and I submit them to the Board, and if the rules governing the Board should require me to make a certain recommendation I do it, and if they don't, I have really nothing to do with it. Unless it would be in a case where I was turned on the open market to go out shopping just like a merchant would go.

Q. Is it a privilege extended to you to recommend?

A. Yes, sir. Until some little matters came up on the Board, which are not necessary to mention here, I had a good deal to do with purchasing supplies. I knew the several competitors in the city and who took a special interest in furnishing.

Q. In the purchasing of fuel for the institutions what authority did you have?

A. I don't know about what time you refer to. Of course, sometimes in the matter of purchasing fuel for the Institutions, we would ask for bids and receive bids, and the competition would be from different mines and mining interests and different corporations, and different qualities of coal. Of course, there has been times when the Board would refer the matter of purchasing coal to me—refer the matter of making the contract to me—thinking I would possibly be better able to protect the institutions than they would be.

Q. Did Mr. McConnell, the Superintendent of the Penitentiary, ever make a proposition to you to furnish coal or fuel to those institutions?

A. Possibly at one time there was some discussion between he and I as to furnishing the institutions with coal. The Board at that particular time referred the matter to me to award the contract, and I, of course, felt like doing the best I could and wasted some little time, and in the meantime I talked with Mr. McConnell about the propriety of buying coal from him. I abandoned that idea, for reasons that it might create some feelings as to furnish-

ing institutions and getting the convict labor to drive around, and I didn't take to the idea at all. And a further reason I feared their inability to carry out the contract on account of prejudice on the part of the railroad company.

Q. Was that the only reason that you didn't come to an agreement with Mr. McConnell?

A. That has been a good while ago. I don't remember just exactly all the reasons that prompted me not to trade with him, but the principal reasons I have stated. One thing was I didn't know so much about the quality of the coal that he represented, and I had conferred with the Superintendents of the several institutions, and I felt that I could get a better grade of coal from another concern. I don't remember just what coal he did represent.

Q. On that occasion did he ever offer to remunerate you in any way if you would award that contract to him?

A. We discussed the matter.

Q. If you had any conversation of that character disclose it

A. I will state nothing but facts. I didn't know what you were driving at. I will just answer that question in this way: The proposition he made to me—if you take this as an answer—was a saving to the State—

Q. Could you answer my question by yes or no, and then you may make any qualification you desire?

A. There might have been something said on that occasion about taking care of me or something of that kind, where it was a saving to the State and no loss to

anybody else. That has been a good while ago and I haven't thought anything about it and I didn't think the thing would ever come up in this shape. I didn't look for anything of this kind; and the proposition that he made to me—I think I could get up the data—it was a proposition cheaper than I had been offered the coal from anybody else, or cheaper than I did get the coal. There might have been some remark that I could be looked after to a certain extent.

Q. You say there might have been such a remark? Don't you know it to be a fact that he did make such a proposition, or do you mean to say that a proposition of that kind would make so little impression upon you that you would not remember it?

A. No, sir. I don't mean to say that. There was something said at that time about a saving to the State, and if I wanted to I might do this, that and the other. I don't remember just what it was. I think it was some two or three years ago.

Q. Don't you remember that he made a proposition, a stipulated offer, of so much per ton, or of a certain per cent if you would award that contract to him and that you refused?

A. I didn't award the contract to him. I bought it from other parties, and of course—

Q. I would like for you to answer the question.

A. I remember something to that effect.

Q. Do you remember what the proposition was that he made?

A. Yes, sir.

Q. What was that proposition?

A. It was something like this: To be a saving to the State of twenty-five cents a ton and that he would divide the twenty-five cents. That is just about as I recollect it. It was a saving to the State and would be divided between us, and still you understand be a less price to the State. That is about the way I remember it.

Q. How much coal do these institutions use in a season?

A. They use considerable coal.

Q. About how much?

A. They use about \$30,000 worth of coal, I suppose. That is about \$15,000 worth of coal annually, I should think.

Q. About how many tons would that be?

A. At this particular time I contracted with the Merchants Transfer Company at \$3.40 a ton and you could figure it out. It would be some 500 or 600 tons. I think at the Insane Asylum alone we used something like \$8,000 worth of coal.

Q. When did this occur? Can you remember definitely about the time?

A. About the time would be in September or October of 1897 or 1898. I am not clear on that. It was either the fall of 1897 or 1898.

March 14th, 1901.

E. T. McCONNELL, being recalled, testified as follows, to-wit:-

(BY MR. PATTON.)

Q. Do you know whether or not Judge Hill has been boarding or spending a part of his time at the Penitentiary in the last few months?

A. A portion of the time. He has a room out there.

Q. Does he take his meals there?

A. Occasionally.

Q. Do you have any idea what per cent of the time he takes his meals there, either greater or less part of the time?

A. I don't know. He is gone from the City quite a good deal. I suppose about one-fourth of his meals.

Q. I mean what part of his time while in the City?

A. I would say half the time. I paid no attention to it.

Q. Do you know why he took up his room there—his board there?

A. He was requested by the Penitentiary committee to assist me in the supervising of the construction of the Penitentiary as much as possible, and he in doing that had to be out there a good deal of time. I could not say that the records of the Penitentiary board would show that he was appointed but he was in fact requested by Governor Jones to assist me, rendering me such assistance as he could, such time as he had to spare.

Q. Do you know whether or not the Board asked him to take a room there and board there part of the time?

A. No, sir.

Q. Do you know whether it was at his solicitation or some one elses that he did come there?

A. The way he first came there I suppose you might say it was my solicitation. He was speaking of having a very hot, unfavorable room at Gleason's. I think that I suggested that there was an empty room there that was not occupied by anybody, and that if he would get him some furniture and put it in there he could sleep.

Q. Since you have been there, within the last year or two anyway, do you know whether or not any horses belonging to outside parties have been kept there?

A. Yes. Kept Mr. Hull's horse there a short while and Mr. Arthur Niell had a horse out there. We worked him and kept him. Outside of that I don't know of any except what was connected with the Penitentiary.

Q. Do you know how long Mr. Hull's horse stayed there?

A. No, sir. I don't. A short while. We worked him to wagons. Worked Mr. Niell's horse also.

Q. Do you know how long Mr. Niell's horse stayed there?

A. No, sir. I could not tell. Several months.

Q. Did the State feed and care for them while they were there?

A. Yes, sir,

Q. Did they ever pay the State for them while they were there?

A. Not that I know of. It was understood that we were to work them for their feed.

Q. What kind of a horse was Mr. Niell's horse?

A. A race horse, I believe. I know we had a monkey and parrot time making him work.

Q. Did he ever make a good work horse?

A. Yes, sir.

Q. How long had he been there before you began working him?

A. I could not say. Probably a month or so.

Q. Do you remember the circumstances under which you advanced some money to Mr. Greer to buy a farm in Lonoke County for Mr. John Powers? If you do just state in your own language.

A. Mr. Powers is a nephew of mine. I raised him from twelve years old. He was my deputy up there. He has never saved a nickel, and I owed him a lot of money on taxes and I saw an opportunity for making an investment for him, and without his knowledge I bought a piece of land through Mr. Greer, what is called a part of the sixteenth section. When his time came for making his annual settlement he was not able to take it up and I was not able to carry it and we sold it. The deed was made to Powers and Powers made a deed to Thompson. Mr. Thompson, I think, sold it to Dr. Beakley,

Q. It is now a part of the Beakley place on which convicts are being worked?

A. Yes, sir.

Q. Didn't the Penitentiary at some time in the past sell a saw mill or some machinery and some wagons to some parties sometime back?

A. No, sir. Not that I know of. The Penitentiary has never had any saw mill.

Q. I say I don't know that it was a saw mill, it was some machinery or something?

A. When we went out of the wood business we had a wood splitter that we sold to Frauenthal of Conway.

Q. Are any convicts used as domestic servants, working for families in this City or State?

A. I have a woman out at my house.

Q. Any employed anywhere else?

A. Yes, sir. There was a negro that the State took charge of in 1893. Mrs. James R. Miller used a negro of twenty-one year sentence as a servant over there. Hired him. And he was pardoned about two weeks before his time was out by Governor Jones, and they received pay for him. I took him away once. He came down and got locked up in the calaboose, and she came before the Board and they ordered me to let her have him.

Q. How long a time while he was a convict was he employed as a servant in this family?

A. Six years, I think. I have been there seven years; he was there when I came and he got out last fall.

Q. Do you know whether or not Mr. Dickinson has ever had a convict employed in his family?

A. I think Mr. Dickinson has had at two different times. He has a hundred and some odd men out at the brick yards. He has a trusty come around and do some work around there.

Q. Do you know whether or not Judge Hill ever had one at his home?

A. Yes, sir. And a boy hired in the office quite a while.

Q. Has he ever had one at his home in Washington County?

A. I think so.

Q. Do you understand whether or not the law prohibits the hiring of convicts out as domestic servants?

A. Yes, sir.

Q. What do you understand the law in that respect to be?

A. The law says it shall not be done. But the Board is my law. I brought them all in when I came down.

Q. You were authorized by the Board to let these convicts out?

A. As I told you I took this one away from Mrs. Miller. She came before the Board and I was instructed to let him go back. There is none of them out now but there used to be. When I came down here nearly every negro woman in the Penitentiary was hired out at \$7.00 or \$8.00 a month.

Q. Whithin the last two years do you remember of any other circumstance in which they were hired out?

A. No, sir. I don't.

Q. Did the convicts ever clear a piece of land belonging to a Mr. Storthz living in the city here?

A. Yes, sir.

Q. Where was it located?

A. Up near the Palarm Station.

Q. Was there ever a contract made by the Penitentiary officials with Mr. Storthz?

A. I made'a contract with him. We had a gin there and we had to have wood, and I agreed, in order to get the wood, to cut it off and put in the land. We cut the wood just in such amounts as we needed it, and had the land rent free. On another place we had a five-year lease and cleared it all up in two years. We cut the wood off and put in the land as we needed the wood off this place.

Q. You got the land for one year free?

A. You might say three years. Part of it three, part two, part one. The wood we cut off last winter, some of it we did not get to put in a crop. We just cleared the land as we needed the wood for the stockade and gin.

Q. Was there ever a written contract entered into?

A. No, sir. It was just simply a question as to where we should get the wood. We had to have wood for the stockade and gin and I would have bought 160 acres of railroad land, but Mr. Wallace, who lived near there, got in ahead of me and bought it.

Q. How much land did you clear for him?

A. I don't know. I suppose fifty or sixty acres, may be. We just cut out and cleared during the winter and during the spring we cultivated what we had cleared.

Q. You say you never had a written contract?

A. No, sir.

Q. And that you received all that you made off the crop? That all went to the State?

A. Every bit—that is, the State got two-thirds of it. Mr. Armstrong furnished the tools and mules and he got one-third.

Q. To the credit of what farm was the proceeds of this turned in?

A. Palarm.

Q. What kind of land was this?

A. Bottom land.

Q. What is customarily paid for clearing land of that nature?

A. We have cleared land from \$7.50 to \$8.00.

Q. Who would get the wood under a contract like that?

A. We cleared 200 or 300 acres for Eagle at \$8.00 and nobody got it. It was burned on the ground.

Q. Have you not on some occasions cleared land for about that price and the State get the wood?

A. The contract with Dr. Beakley is for \$7.50 an acre and we get the wood. In this case it was not a question of clearing the land, it was a question of getting fuel,

Q. How much land was in cultivation on the Palarm place? I mean that you cultivated with the convicts?

A. Between 700 and 800 acres last year.

Q. Under the assumption that there was seventy acres of this ground, that was an additional ten per cent on the Palarm place?

A. Whatever it was. I don't know. Might be fifty and might be seventy. I don't know.

March 18th, 1901.

G. W. CUNNINGHAM, having been sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name, residence and occupation.

A. G. W. Cunningham. My home is Pulaski County, where I am now living. I am running a camp in Conway County, working convicts and farming.

Q. You are Warden up there?

A. Yes, sir.

Q. Who did you succeed there as Warden?

A. J. B. Armistead. There is two camps there and I was on the State lease, and after Mr. Armistead left I took charge of both camps.

Q. Were you employed there at the same time Mr. Armistead was?

A. Yes, sir. I was on the State lease on the back side of the place.

Q. You are acquainted with Mr. Armistead?

A. Yes, sir.

Q. How long have you been employed there?

A. I have been up there since March, 1899, I think it was.

Q. How long had Mr. Armistead been there?

A. I think he had been there a year or two before I went. I am not certain just what time he went there. He has been there ever since I have been up there.

Q. Since you have been there do you know whether or not Mr. Armistead ever owned any cattle and hogs, any number of them?

A. Just before he left there he bought some cattle—about sixty-five head, I think. He said he bought them in some of the upper counties.

Q. What kind of cattle were they?

A. From one to two years old and three. All steers.

Q. How long did he own them and keep them there?

A. I suppose a couple of months.

Q. What did he finally do with them?

A. He sent his brother-in-law down there and his brother-in-law told me he had bought them from Mr. Armistead. He wrote to me to sell them. There wasn't anybody came there and wanted them and after a while his brother-in-law took them away.

Q. Where were they kept?

A. They ran over in the corn stalk field.

Q. Weren't some of them sold as beef cattle or shipped out as beef cattle?

A. Not that I know of.

Q. Do you know whether or not they were fed any while they were there?

A. If they were I didn't know it. They were there about a month after I taken charge, and they ran there in the pasture. They were not fed any while I was there, and if they were fed before that I don't know.

Q. Who did this stalk field belong to?

A. Mr. Little. We had a stalk field that belonged to the State and the cattle were never on our part of the State lease. Mr. Armistead told me he meant to put them on the State corn field, but he never did do it.

Q. Do you know what became of those cattle?

A. He shipped them out. All I know is Armistead's brother-in-law come there and got them and said he was going to ship them from Conway home, and he lived in Washington County.

Q. You spoke of cattle. Do you know whether or not he owned any hogs there?

A. I don't know that he did. The State owned a lot of hogs there. He always told me they were State hogs.

Q. If he owned any hogs there you didn't know it?

A. No, sir.

Q. And hogs that were said to be State hogs were fed with the State feed?

A. Yes, sir.

Q. And all the hogs there were treated and considered as State property?

A. Yes, sir. When he left there he left a lot of hogs there.

Q. Do you know what became of those State hogs or if they were there yet?

A. He left some of them in the pen and I killed eight. A disease struck them and he killed some and I killed eight of them.

Q. How many hogs did the State own there?

A. I don't know. I have heard him say he had 200 or 300 head there. I know he killed a great many there for the camp—that is, I suppose he killed them for the camp. I was there and seen him cleaning hogs, and saw a lot of meat in the store room.

Q. Do you know how many he killed?

A. No, sir.

Q. Do you know whether any of them were ever disposed of any other way?

A. I don't know that I do. Mr. Little had hogs on his place that he fed in his individual lot. I never saw Mr. Armistead ship any hogs away from there.

March 21, 1901.

M. D. L. COOK, recalled, testified as follows, to-wit:

(BY MR. PATTON.)

Q. Is it not your duty as Financial Agent to sell the cotton that belongs to the State?

A. Yes, sir.

Q. You have acted in the discharge of that duty, have you not?

A. Yes, sir.

Q. How many crops of cotton have you sold since you have been in this position?

A. I sold one and a part of this one. I sold the crop of 1899, and part of the crop of 1900.

Q. When did you sell the crop of 1899 and to whom?

A. We commenced weighing on the 12th. I went in office on the 1st, and the Board ordered that the cotton be sold, and I, being kind of new at that business, asked Mr. McConnell to go along with me. We sold that cotton along about the 10th of February.

Q. To whom did you sell this cotton?

A. Lesser Cotton Company.

Q. On what date was the transaction made with them?

A. It was between the 8th and 12th, I can't tell just the date. I just come down here and made the sale, got the bids and closed out the sale, and then they come right out and weighed it up. I haven't got the dates, only the date we weighed it.

Q. Did you ever keep a record of the dates of these transactions?

A. I come down and sell and then the only dates I keep is the dates we weigh up.

Q. What was the amount of this sale?

A. Fifty-three thousand seven hundred and forty-seven dollars and eighteen cents.

Q. At what price per pound did you sell it?

A. $88\frac{3}{4}$.

Q. That is for the various grades?

A. Yes, sir. I just sold it in bulk.

Q. Is it not a fact that the price of cotton fluctuates quite often?

A. Yes, sir. Sometimes it does.

Q. Was it not fluctuating about that time?

A. We went around and got a good many bids on this cotton, and the Board had ordered it to be sold if we could get as much as eight cents. We went to all the cotton buyers. I was not much acquainted with them. We went to a number of them at different times to give them a chance to wire and get prices. And then we talked to cotton men here, such as Baucum and McNutt, and after we got all those bids in it was after dark, and being new business to me I didn't feel like turning it loose without knowing just what I was doing, and we went and talked to those cotton men, and Mr. McNutt says: "If you can get that price you had better take it." I telephoned to the Lesser Cotton Company they could have the cotton, as they were the best bidders.

Q. Anyway, you sold it at the prevailing market price the time of the sale?

A. Yes, sir.

Q. Do you know whether it was on a rising or falling market?

A. Really, I don't know. We could find out from the markets on those days.

Q. And when the market prices were fluctuating and you sold it at these different prices for different grades, you didn't keep any kind of record or memoranda of the date, so that you would know what the prevailing market price on that day was?

A. It was right there within two days of the time. One bid was 8.3, the other $8.6\frac{1}{4}$, the other $8.8\frac{3}{8}$. We got three bids from three different buyers, and then I just told them to go on out and weigh it up. I don't think it was more than two days from the time I sold.

Q. How did they pay for this, cash?

A. Yes, sir. Gave us a check for that amount of money.

Q. On what date was that?

A. That date was on the 12th. No, it could not have been on the 12th. I haven't the date of that. The date will show at the Treasurer's office.

Q. When did you say you concluded or completed delivering the cotton?

A. They just come out and weighed it up on the 12th.

Q. Was the money paid then?

A. As soon as they could get it all weighed up.

Q. How long did it take them to weigh it?

A. Part of two days.

Q. Then they must have had it weighed by the 14th?

A. I think so.

Q. Did they pay you then?

A. I think so.

Q. Then what did you do with the check?

A. Deposited it in the Treasury.

Q. How long did you hold it before you deposited?

A. I don't know whether we went right down and collected it immediately.

Q. After it was collected, I mean, how long did you retain this check in your possession?

A. Just long enough to go from the cotton camp to the Treasury.

Q. You didn't keep it in your possession any length of time?

A. No, sir. If I had made a sale of one thousand bales I would have to draw some money. Before we could close out the sale I would have to draw on the parties that bought.

Q. You were watching the cotton market pretty closely?

A. I had not been in the business very long.

Q. You had a great responsibility in disposing of this cotton?

A. Yes, sir. The cotton market was pretty good and the Board ordered us to sell it.

Q. After you sold the cotton did you continue to watch the market to see whether it fell or rose?

A. I think it went up a little after that but I am not positive.

Q. Do you know how much it went up in the next few days?

A. No, sir.

(BY SENATOR BUCKNER.)

Q. Did you sell the Lesser Cotton Company the entire crop?

A. Yes, sir. All in one lot. It was all lying there and we sold them the whole thing.

Q. You didn't sell part to them and part to anybody else?

A. No, sir.

Q. On the day this sale was effected you received offers from two other cotton buyers?

A. Yes, sir.

Q. And the bid from the Lesser Cotton Company was the largest of the three bids?

A. Yes, sir.

Q. You closed out the sale to them on that day?

A. Yes, sir.

Q. At that price?

A. Yes, sir.

Q. The cotton was subsequently delivered?

A. It was their cotton then.

Q. As soon as the cotton was weighed to them they gave you a check for the money?

A. Just as soon as we could figure it up

Q. And you deposited that check in the Treasurer's office?

A. Yes, sir.

(BY MR. PATTON.)

Q. Before being called here this time you was notified what testimony would be wanted and demanded of you, and you were given an opportunity to investigate your books and records at the Penitentiary before testifying?

A. Yes, sir. By telephone. I have got such records as you want.

Q. How much of the crop of 1900 have you sold?

A. Two hundred, sixty-nine, four hundred and six, one thousand and nineteen, in all one thousand six hundred and ninety-four.

Q. What were the dates of those different sales and the prices received for them?

A. On the 1st of October. I sold 200 bales to the Lesser Cotton Company for 10 cents; on the 9th to the Taylor Cotton Company sixty-nine bales at 9 11-16; November 8, I sold 406 to the Lesser Cotton Company for 8.30; December 19th I sold 1019 at 8.65. We have got about 700 bales more.

Q. When was payment made for those different sales?

A. That was made at different times. The 1019 was weighed in December and January and paid for in January.

Q. The payment was not made at the time of the sale?

A. Had to draw. We did not have any money in the Treasury. We could not deliver the cotton, it was up the country and down the river. We had to weigh three or four times. Some of it pressed across the river and some of it pressed this side, and I didn't make a final settlement until in January.

March 22nd, 1901.

AD. HAMBURG, having been duly sworn, testified as follows, to-wit:

(BY MR. PATTON.)

Q. State your name and residence?

A. Ad. Hamburg, Little Rock.

Q. Occupation.

A. Local manager for the Lesser Cotton Company.

Q. Did you buy a quantity of cotton from the State Penitentiary in February, 1900?

A. I did.

Q. Can you refer to your books and tell us the date upon which you bought this cotton?

A. I cannot. That is the only part that I have not been able to find. I have no record of that. When I make a deal there is no memoranda of the time of sale. The only record that I possibly could have is my report to the St. Louis office, which I failed to find from the simple fact that this was either done by wire or telephone, so I can only state the purchase from memory.

Q. You keep no day book or memoranda that will show the exact date of the purchase?

A. No, sir.

Q. Have you got any record by which you could tell the amount paid and the date on which the check was issued?

A. Yes, sir. I have the receipted invoice from the Penitentiary, the check which was paid to them, the stub book and the entry on my cash book.

Q. What day does that show?

A. On the 17th of February. The cotton was delivered several days prior to that, and sale several days prior to delivery.

Q. How do you arrive at that fact?

A. By force of custom and circumstances, which I can explain. When I buy a lot of cotton of that magnitude it may take one or two days or three days before I receive this cotton. The weather may interfere, or other business take a day or two. It requires two days to receive that number of bales, and of course we pay for the cotton after the delivery is made and the invoice presented. So there may be at times the lapse of a week or longer from the time the deal is made and the cotton delivered. Sometimes longer.

Q. When is it customary to issue your check?

A. Upon presentation after the delivery of the cotton upon demand.

Q. Was this demand not made immediately after the cotton had been delivered in this instance?

A. No, sir. There was several days elapsed. The cotton was delivered on the 12th day of February and the invoice presented on the 17th of February.

Q. How do you determine that the cotton was delivered on the 12th day of February?

A. From the original entry.

Q. You have a record of that original entry?

A. Yes, sir. I have it with me. Part of it was delivered on the 12th and 13th.

Q. This shows with whom this transaction was made?

A. No, sir. Don't show anything except the receiving of the cotton and the weighing.

Q. Do you know that these particular items here represent the cotton that you bought from the Penitentiary.

A. I do.

Q. Have you any note made there to show that is Penitentiary cotton?

A. The headings here one says "State cotton" and the other "Arkansas." When the cotton comes in it is checked by the O. K. of the cashier and a check issued.

Q. Do you know how long it took them to weigh the cotton in this instance?

A. My records show two days—February 12th and 13th.

Q. Do you keep a record in your business showing the price of cotton or the price that you pay each day?

A. All the transactions of the day.

Q. Can you refer to your books and tell what the price of cotton on the 10th of February was—that is, what you paid for it?

A. There is only a few bales in here 8 to $8\frac{1}{4}$ cents.

Q. The next day what did you pay?

A. I don't think I bought any cotton then.

Q. The next day you bought?

A. On the 5th of February we bought cotton at England at $7\frac{1}{2}$ to $7\frac{5}{8}$, invoice of which I exhibit. On the 7th of February from $7\frac{1}{4}$ to $7\frac{7}{8}$. On the 10th of February $7\frac{1}{2}$ to $8\frac{1}{4}$. On the 14th it was $7\frac{3}{4}$, 8 and $8\frac{3}{4}$. It gets higher right along. On the 14th 8 to $8\frac{1}{4}$; on the 16th, $8\frac{1}{4}$. Here is an invoice of February 12th that will give you an illustration—101 bales at Atkins bought right here from Burrow & Bennet at $7.78\frac{1}{8}$. Here is one invoice from Morrilton, February 14th at 8 cents. Here is one on February 6th, $7\frac{3}{8}$ and $7\frac{1}{2}$. One invoice on February 6th was 7.45.

Q. I will ask you if you can furnish us with the market quotations of cotton at Little Rock during the month of February?

A. Yes, sir. I have had the secretary of the Board of Trade fix this up.

Q. Have you a copy of the market quotations of cotton in New York during this period?

A. I have the Financial ———, the official organ of the world.

Q. That gives the price of cotton in New York?

A. Everywhere. In every leading market in the world.

Q. Is it not a fact that you are governed by those prices in buying cotton here?

A. Largely.

Q. Can you tell us what the prevailing price in the foreign markets were from the 10th to the 15th?

A. I think so. No, I haven't got that. I could have got a later issue.

Q. Does your recollection serve you as to whether or not cotton was higher or lower on the 10th than on the 15th?

A. It is not a question of recollection, but a question of knowledge that cotton advanced during the spring. I know that. Last season the cotton during the summer months advanced.

Q. Do you think that the price would differ very materially between the 10th and the 15th?

A. Our local quotations are governed by the foreign market.

Q. This book here has no entry made in the book after that State cotton?

A. From the simple fact that when I took up that State cotton I was very busy receiving cotton and I let Mr. Clarkson, who is our representative at Batesville, and is an expert weigher, I had him to come over here and re-

ceive this cotton, or receive any other cotton. And he used an extra book, I think.

Q. And the greater part of the book is left blank?

A. We use sometimes half a dozen of these books in one day. We are receiving cotton in three different places. Books that are used to-day are not used tomorrow. They remain in the office for checking purposes.

Q. On the page immediatly after you conclude the invoice of the State cotton here on the 12th I see a number of leaves have been torn out?

A. It looks that way.

Q. And in this inventory of the 13th it is the only inventory occurring in this book?

A. Well, because we just used an extra book. Where we handle 100,000 bales of cotton we can't take anything but small books to receive the cotton.

Q. Do you use an extra book for each and every transaction of this kind? Is that your custom?

A. No, sir.

Q. In this particular instance you did?

A. As I explained this cotton was weighed by two different men.

Q. What is the amount of the check?

A. Fifty-three thousand seven hundred and forty-seven dollars and eighteen cents.

Little Rock, Ark., March 22nd, 1901.

Mr. Ad. Hamberg, Manager, City.

Dear Sir:—The following are the official quotations for middling cotton at Little Rock, from February 1st to 15th, 1900.

February 1st, 1900.....	7¼
February 5th, 1900.....	7⅞
February 8th, 1900.....	7⅞
February 12th, 1900.....	8 1-16
February 15th, 1900.....	8¼
February 2nd, 1900.....	7¼
February 6th, 1900.....	7¾
February 9th, 1900.....	7⅞
February 13th, 1900.....	8 1-16
February 3rd, 1900.....	7⅞
February 7th, 1900.....	7¾
February 10th, 1900.....	7⅞
February 14th, 1900.....	8¼

Very respectfully,

GEO. R. BROWN,
Secretary.

March 25th, 1901.

MAXWELL COFFIN, being sworn testified as follows, to-wit:

(EXAMINED BY JUDGE W. E. HEMINGWAY.)

Q. You live in Little Rock?

A. Yes, sir.

Q. Are you engaged, and have you been engaged, in the real estate business in Little Rock?

A. Yes, sir.

Q. Are you familiar with the values of real estate in the city and suburbs?

A. I think so.

Q. Are you acquainted with the lands sold to the State for the new Penitentiary?

A. Yes, sir. I have been over the land and around it a great many times.

Q. What, in your opinion, was a reasonable value of the land at the time at which it was sold to the State last year?

A. You mean taking into consideration all the circumstances?

Q. Yes.

A. It was reputed to have brought \$5,000 for fifteen acres, and I thought was a very fair price. I thought it was about its value.

Q. Are there many places at which the Penitentiary could have been located in the suburbs of Little Rock that were in condition to be bought at that time?

A. I imagine not taking all the requirements that would have to be met.

Q. Suppose a person had a tract of land out of which fifteen acres suitable for that purpose could have been taken, could the fifteen acres have been bought at as low a price per acre as if all the land had been taken?

A. No, sir. That would not be the case with any enterprise of that character.

Q. Where fifteen acres are taken out of a forty acre tract, the fifteen acres being on the crest of a hill, the remainder being left on the sides of the hill, what effect would taking fifteen acres have upon the balance?

A. In a case like this it renders the balance, not valueless, but depreciates the value of it very materially.

Q. Do you know the tract of land owned by a man named Joiner out near the Penitentiary?

A. Yes, sir.

Q. Do you know what he is asking for his tract of land?

A. Yes, sir. He is asking \$500 an acre. That is just this side across the pike from the Penitentiary.

Q. Suppose that land was situated in the bottom near the Penitentiary, would it be as valuable as that on the crest of the hill?

A. No. When you go down into the bottom south of the present Penitentiary land you drop off into Fourche bottom, not only considered unhealthy, but the land is not fit for agriculture. If you go very far down there it over-flows and has not very much value.

Q. Your opinion then is, taking into consideration all the circumstances, that the price paid was not an unreasonable one?

A. No. I thought at the time, and think so yet, that it was a very fair purchase. That the Penitentiary Commissioners made a very good trade.

Q. What effect would obtaining switching privileges on a switch of the grantor have? Would they be valuable or not?

A. Yes, sir. Down here in the east end of town you can sell property that has access to a switch for pretty near double that of property that has no access to a switch. For instance, take the location which is now the Beebe Stave Company. That was given to the Beebe Stave Company and it was so remote from a switch that they had to go to the expense of several thousand dollars in order to put in a switch. They could not compete with other concerns that had a switch.

Q. Then the actual effect on the value of the property is to enhance it, as you say, in the manufacturing part of the town nearly 100 per cent?

A. It is hard to say how much. It is undoubtedly worth more and always sells for more.

(BY MR. PATTON.)

Q. You say that in your opinion that this price paid was a reasonable one?

A. Yes, sir.

Q. On what basis do you form that opinion?

A. On the sales of other adjacent property and loans made by conservative men here. I can give you two or three instances. Here is one that came under my notice within sixty days. Mr. W. J. Thompson of the Citizens bank, a man of very large means and good judg-

ment, for whom we have lent some money in our business, told me he had to foreclose a piece of property across the street from the Penitentiary that was owned by a man named Hamlet. There was fifty acres in this tract and Thompson had lent something like \$7,000 or \$8,000. That would be \$150 and the basis of money lending is about forty per cent of its value. There is property just across the street that was valued by a man that is very conservative. Then there is ten acres of ground right along there in the same locality that was owned by a man named Vestal that sold for something like the same price.

Q. When was this loan made on this land out here?

A. It was made four or five years ago when land was not so valuable as it is now—when values were much more depressed.

Q. When was the Vestal transaction?

A. Something like two years ago.

Q. Do you know of any other transfers out there?

A. Not right adjoining the property. I know I myself bought some similar property in connection with some other gentlemen, that is, property a little more accessible to the city, and paid more than that per acre for it. We paid \$500 an acre for it. It is further from the Penitentiary than the other piece that I spoke of. I just happened to have gone over this ground, this Penitentiary ground, not more than sixty days ago with Judge Cockrill, and we discussed the matter about what a splendid site they had secured.

(BY JUDGE HEMINGWAY.)

Q. Do you know of any location about the town that is better adapted for the purposes of the Penitentiary than that is—that is, taking into consideration the lay of the ground, its location with reference to the town, its drainage and everything else that would effect its value, do you know of any better place about the City of Little Rock?

A. No, sir. I don't. It is on one of the best roads that leads into the City. It is easily accessible to the railroad. It is a commanding sight, where the guards can see in every direction, and it seems to be an ideal site. I was very much struck about its location.

Q. You have no interest in the matter?

A. None whatever.

(BY MR. PATTON.)

Q. Is it not a fact that real estate men are usually bulls in the real estate market?

A. I don't think so. All my associates tell me I am on the other side of it—every time I come to buy anything. I am not exactly a real estate agent but I have got to buy low in order to make a profit on it.

Q. It must advance to make a profit?

A. Unless I happen to buy it pretty cheap.

R. C. BUTLER, having been first sworn, testified as follows, to-wit:

Q. You reside in the City of Little Rock?

A. Yes, sir.

Q. What is your business?

A. Real estate.

Q. Are you acquainted with the present location of the new Penitentiary?

A. Yes, sir.

Q. Do you know what lands out in that vicinity are worth?

A. Yes, sir.

Q. Just state what knowledge you have on the subject.

A. We had an offer the other day of \$5,000 for Josh Joiner's six acres. That is the highest price of any that I know of near the Penitentiary.

Q. How far is that from the Penitentiary?

A. I din't know exactly how far it is. I suppose a quarter of a mile. Perhaps half a mile. My own joins the Penitentiary.

Q. On what side does it join?

A. Joins on the north. Mine lies north of the Penitentiary.

Q. On which side of the public road?

A. On both. Part of it on the south of the pike, the majority of it north of the pike.

Q. That then goes down into the bottom?

A. Yes, sir.

Q. Now, from what you know of the value of land out

there, what would you say is the fair value of the fifteen acres on which the Penitentiary is located?

A. That is better than that I have—that is, the majority of that I have. That I have south of the pike is about as good as that. I would think about \$450 or \$500 an acre. I sold two acres adjoining the Penitentiary the other day for \$1,050. It was thought then that I sold it reasonable.

Q. Had you any interest in or have you any interest now in the former owners of the Penitentiary site, the persons who sold the site to the State?

A. I don't know who sold it.

Q. W. W. Dickinson, the President of the Arkansas Brick & Manufacturing Company.

A. I am acquainted with him but I didn't know that he sold it to them.

Q. If he sold that fifteen acres to the State at \$333 an acre, giving the State the right to use a railroad switch running from the Iron Mountain depot out to the brick yard for purpose of moving freight in and shipping stuff out, what would you say as to whether or not that was a reasonable price for the State to pay?

A. I would say it was very reasonable. I can also say that about forty acres right north of mine has been laid out into city lots and has been sold off in the last two years. It is no further west than where the Penitentiary is but it is north of this, but no further out of town. We have just finished selling that off in lots and blocks,

have been selling it for the last two years. That has brought between \$500 and \$1,000 an acre. Corner lots sold from \$250 to \$300 a lot, about five lots to an acre.

(BY MR. PATTON.)

Q. Is real estate in that vicinity advancing or declining in price?

A. Real estate all over the city is advancing.

Q. Is it advancing very materially out there?

A. No. Just been a steady growth out there for years. For the last eight years it has been increasing in value. Since the electric lines have been running.

Q. You say you sold two acres there the other day for \$1,050? How long had you owned that land?

A. Since 1900.

Q. How much do you own out there now?

A. Forty-three acres.

Q. How much did you pay for that?

A. I bought it at different times.

Q. This tract in 1900.

A. It was heavily mortgaged and I got it at a sacrifice. I gave a real estate firm \$500 for purchasing it for me, closing up the deal, and the exact cost of it I don't know.

Q. Have you no means of finding out?

A. Yes, sir. I could by going over my books and getting all the expenses in buying it. There were two mortgages against it and I had to have those released.

Q. Did you sell this tract the other day at a loss or gain?

A. I sold it at a small profit.

Q. Is it not to your interest that real estate should advance in that vicinity as well as other parts of the city?

A. I have real estate there and other parts of the city, and I would like to see it advance, of course.

Q. Does not the fact that manufacturing establishments have been built in a neighborhood advance the price?

A. They naturally would when they get to running. Now it is just about what it was several years ago. People are moving out so they can own more ground. People who have been paying rent now own their own homes out there. The town is growing out that way very rapidly and not so fast in the city. There are a great many railroad people out there.

Q. These other tracts that you own there, how long have you owned them?

A. I don't know just when I did buy that.

Q. Did you buy all the rest of it in one tract?

A. Yes, sir. The other five. It was last year, though.

Q. What did you pay for them?

A. Seven hundred and fifty dollars for the five. But that is getting off from the Penitentiary. That is farther west and there is a creek running through that. The Penitentiary sits on a hill and this ground runs right

straight back into a kind of bottom and this five I got very cheap.

Q. How long have you owned the main body of your land out there?

A. I bought it all last year.

Q. What did you pay for your forty odd acres?

A. I just stated that I didn't know what it did cost me.

Q. The two acres was carved out of this forty acres?

A. Yes, sir. I sold the two acres out of forty right lately.

JOHN W. DICKINSON, Jr., having been sworn, testified as follows, to-wit:

Q. You live in Little Rock?

A. Yes, sir.

Q. Are you the Secretary of the Arkansas Brick & Manufacturing Company?

A. Yes, sir.

Q. As such do you know the price that has been paid for the pressed brick sold by that Company to the citizens of Little Rock during the last year?

A. I do.

Q. What has pressed brick of reasonable uniform color been sold for, delivered to purchasers in Little Rock?

A. All pressed brick is graded according to the kind and colors. You take brick where you just open the kiln and take them out as you come to them without regard to

colors, you get all kinds of colors. The price of those brick has been never less than \$7.00 per thousand F. O. B. at the yards. Delivered anywhere in the City they are \$8.00. Now, the hard brick, which we call the select brick, they are worth \$8.00 at the yards, or worth \$9.00 delivered anywhere in the City. If its a long haul they are worth more, like down to the Thomas Manufacturing Company. Then when we take the face brick or select brick of fairly uniform color we get never less than \$10.00, \$11.00, \$12.00 and \$15.00. The best face brick are worth \$15.00.

Q. Did you sell the brick that went into the saloon next to the Foster Hardware Company?

A. We sold the brick, the face brick there.

Q. What did you get for those brick?

A. Fifteen dollars a thousand.

(BY MR. PATTON.)

Q. You say that they are worth about \$7.00 kiln run at the yards and \$8.00 delivered in the City? Then you estimate it worth about a dollar to deliver them?

A. In the neighborhood of a dollar.

Q. When did you sell the brick that went into the saloon?

A. Sold them last year. In March, I think it was.

Q. Is it not a fact that the price of brick has advanced considerably in the last year?

A. No, sir. I will say this: I have had charge almost continually of the sale of brick in the office, and we have not advanced the price of brick one dollar, although

we could have gotten one and two dollars more a thousand than we have gotten. It has been almost impossible for the contractors to get them at all. We did not think it was right to advance the price of brick. We could make a fair profit and run the business satisfactory to the contractors, and we did not want the trade for only one day.

Q. Other men sold brick at an advance of from one to two dollars a thousand?

A. I don't know about that. I haven't paid any attention to that. A man comes to me to get brick and I give him the price, and if he wants them he takes them and if he don't, he lets them alone.

Q. You have never paid any attention then as to what other brick manufacturers asked for brick?

A. No, sir. We have not been able to meet our demands and we have not raised the price.

M. J. CRAIG, having been first duly sworn, testified as follows, to-wit:

Q. Where do you live?

A. Little Rock.

Q. What is your business?

A. Brick business. Contracting.

Q. How long have you been engaged in the brick business?

A. Between twenty-five and thirty years.

Q. Have you been engaged in the business as a contractor in the City of Little Rock?

A. No, sir. I haven't in the City of Little Rock.

Q. In what way have you been engaged in the brick business here?

A. I have had charge of the brick business out on the new Penitentiary for W. W. Dickinson or the Arkansas Brick & Manufacturing Company.

Q. How long have you been in charge of that business there?

A. Ever since about the 1st of last May.

Q. May, 1900?

A. Yes, sir.

Q. Do you know the number of brick that have gone into the new Penitentiary, the walls and buildings?

A. Well, I could not say exactly the amount, but it is somewhere between 6,500,000 and 6,700,000.

Q. Have you made an estimate of the number of hours that have been worked in laying the brick there?

A. Approximately, yes, sir.

Q. What is the number of hours in laying that brick?

A. Three thousand seven hundred and three days work for one man, approximately. There was something done before I took hold of it.

Q. Would the real number of day's work vary very far from the number you have stated?

A. I don't hardly think it would.

Q. How many brick a day would a man average in doing that work?

A. It will run somewhere between one thousand seven hundred and one thousand eight hundred.

Q. Have you got the blue prints of the walls and buildings at the Penitentiary?

A. Yes, sir.

Q. Are those the prints?

A. Yes, sir.

Q. Is the work that has been done there plain face work or otherwise?

A. Some of it of course is plain face work, but the majority of it is not.

Q. What would you call a majority of it?

A. The majority part of it would be fancy work, extra work that is put on it.

Q. When the work was begun under the original contract, was it to be plain work, or was it to be according to the last plans fancy work—a large part of it?

A. As I understood it the contract was to duplicate the old Penitentiary, and that was nothing but straight work.

Q. What is the difference in the cost of doing work according to the original contract and doing it according to the amended contract, if there is any difference?

A. Yes, sir. There is quite a good deal of difference.

Q. Could a bricklayer do as much work according to the original plans as according to the amended plans?

A. He could not do as much work in a day with these plans as he could under the original contract.

Q. Then which would be the most expensive to the contractor?

A. The work upon the amended plans.

Q. Would there be a large difference?

A. Yes, sir.

Q. According to the original plans about how many brick would brick layers average a day?

A. I expect probably from two thousand two hundred to two thousand seven hundred.

Q. And working under these plans they did average how much?

A. Between one thousand seven hundred and one thousand eight hundred.

Q. Was there any work according to the last plans that is difficult?

A. Yes, sir. Some of it was very difficult.

Q. How many brick would a brick layer put down a day in that difficult work?

A. From seven hundred to one thousand two hundred.

Q. The amended contract calls for a certain price for work done with pressed brick of reasonably uniform color? How did you get the brick to do that work?

A. Had them sorted out on the buildings.

Q. From what?

A. From brick that was drawn from the kilns.

Q. Then, if I understand you, a kiln of brick was taken out and in order to get these brick of reasonably uniform color you had to put men in to cull them?

A. Yes, sir.

Q. Did that require much time and labor?

A. Yes, sir. It required time.

Q. Required time of the man who did the culling?

A. Yes, sir.

Q. Was the brick that was used culled brick of reasonably uniform color?

A. Yes, sir.

Q. All of it or a part?

A. Some of it would be. You take the office building, the dining room building and the hospital building we took more pains to get the color running exactly so that it would be above the average in uniform color. It would be similar to buying brick in St. Louis purpose for a front.

Q. Were you selling any brick of that character during the time you were putting it in the Penitentiary?

A. Yes, sir.

Q. Do you know the brick that went into the Pettifer building?

A. Yes, sir.

Q. How did the brick that went into the Pettifer building compare with the brick that you have spoken of?

A. They were exactly the same. They averaged the same. I took extraordinary pains on the hospital building to have the colors run as near as possible.

Q. Then you put the same character of brick in the hospital and office as in the Pettifer building?

A. The brick that goes into the hospital building I paid extra attention to that. It would not be the same in color as the office building.

Q. What is the difference in price?

A. The brick that I am putting into the hospital building are brick that range higher in price than the office building.

Q. And the office building and the Pettifer building are the same brick?

A. Yes, sir. Those in the hospital building are light red brick and they are hard to get.

Q. Do you know the price the state agreed to pay for the work under the amended contract?

A. I have seen the contract.

Q. I will ask you to state whether or not the price charged the State was a reasonable one, having reference to the work to be done and the price of work in this locality?

A. Yes, sir. I think it a good first-class contract.

Q. For who?

A. For the State.

Q. I will ask you to state whether or not you believe that the State could have gotten a more favorable contract from anybody else?

A. I don't believe they could. I don't believe they could have gotten a contract in the United States for less.

Q. You don't believe that they could have gotten anybody else to have done the work as cheaply as it is done under the contract?

A. I don't believe they could.

E. J. VAN WERT, having been duly sworn testified as follows, to-wit:

Q. Where do you live?

A. Little Rock.

Q. What is your business?

A. At the present time I am in the cement business.

Q. Have you ever been engaged in the business of contractor for brick work?

A. Yes, sir.

Q. Have you ever seen the walls and buildings of the new Penitentiary?

A. Yes, sir.

Q. Do you know what the terms of the contract for the building of the Penitentiary are?

A. I do not. I never read the contract and don't know anything about it.

Q. The terms are to build the walls and buildings inside of the walls for \$8.50 per thousand wall measurement, the State to furnish the mortar and the hod carriers, and \$10.50 per thousand for pressed brick of fairly uniform color. I will ask you to state whether or not in your opinion, that was a fair contract for the State for the building?

A. I will say this: I would have to be posted as regard to the price of lime and sand.

Q. Say that the lime and sand per thousand brick would cost \$1.00 and the hod carrier would cost fifty cents?

A. That would be \$1.50. I will say this: That on the stockade, the heavy work, it is a good fair price, but when you come to the work on the inside with all the dental work, the cornice work and also the panels and all the extra work which they have not got on the outside of the wall except the batter, that takes time. You have pilasters. It is a heavy wall and can be done less than the inside buildings. It is not near the work in the building of the outside walls that there is in the walls that has got to be built yet. The rough work is done. There is the hospital building and cell buildings as I understand it; I know you can't build work like that to get men that will average over six hundred brick a day.

Q. Take the work as a whole, was that contract, in your opinion, a fair one or an unreasonable one for the State?

A. I have contracted in Kansas City, St. Louis, Fort

Worth and Weatherford, and I know I never would figure on a job like that for any such money.

Q. Take the job as a whole how many brick a day do you think a bricklayer would average?

A. I expect they could average 1,600. Maybe a little more if you had men that was willing to work.

(BY MR. PATTON.)

Q. You say you have been a contractor?

A. Yes, sir.

Q. Have you ever had any contracts here?

A. No, sir.

Q. How long have you been here?

A. One year in the City.

Q. You say you are in the same work? Do you mean as a contractor in that line?

A. Yes, sir.

Q. Independent and by yourself?

A. I am with Mr. M. J. Craig.

(BY JUDGE HEMINGWAY.)

Q. You have done a great deal of brick work elsewhere?

A. Yes, sir.

Q. How long have you been engaged in doing brick work elsewhere?

A. Fifteen years.

Q. Could a man do any more brick work here than he could any place you ever worked?

A. No, sir. I could not say they could.

Q. And you say there is a great deal of that work that is exceedingly difficult work?

A. The plans will show. Anybody can read plans. Here is the front elevation on the office building. A man could not do work like that like he could on the walls on the outside. He can't do it; anybody ought to know that.

R. S. TRUETT, having been first duly sworn, testified as follows, to-wit:

Q. Where do you live?

A. In Little Rock.

Q. What is your business?

A. Brick layer and contractor.

Q. How long have you been in the business?

A. Eighteen years in this State.

Q. How long have been in the business in Little Rock?

A. Off and on since 1890.

Q. Have you been doing work as a contractor in Arkansas during the last two years?

A. I have only been here a year this time. I put in a little over a year in Fort Smith. I went up there after the cyclone.

Q. You were the foreman for Mr. C. W. Clark?

A. Yes, sir. Built the Miller County Court House, and St. Francis.

Q. Have you ever examined the buildings and the wall of the new Penitentiary?

A. No, sir.

Q. Are you familiar with the contract under which the buildings and walls are being put up?

A. No, sir. I have never been out there.

Q. I will show you the blue prints of the buildings and walls and ask you to state, what, in your opinion, would have been a reasonable price for doing that work, by the thousand, furnish everything?

A. The way we figure here—work I have been doing—we figure actual work and get from \$13.00 to \$14.00 a thousand. That is actual count. Now, on job work I get about \$16.00. On a building I figure a little closer.

Q. What do you think would have been a reasonable price for doing that work, taking it as a whole, the walls and the buildings and furnish everything?

A. I suppose \$13.00 or \$14.00. There is a lot of this work a man can't do anything on it. I would figure it on an average of about \$13.00 or \$14.00.

Q. You think that would have been worth from \$13.00 to \$14.00?

A. Yes, sir. I would not take it for any less.

(BY MR. PATTON.)

Q. Thirteen or fourteen dollars?

A. Yes, sir.

Q. And the contractor to furnish all the material and labor?

A. Yes, sir.

Q. What is the cement and mortar—whatever is used in laying the brick—what is that per thousand?

A. I suppose \$1.00 for lime and water and about \$1.25 for—

Q. What does the hod carriers and mixers cost?

A. I pay \$1.50 for nine hours for all my labor. You could not figure on a man laying over two thousand on a job like that. Some places he might lay three thousand or four thousand, and maybe the next day he might not lay one thousand. There are places on there that he would not lay one thousand.

Q. I mean, what do you estimate the cost of hod carriers and mortar mixers and all such men as that to be per thousand?

A. Brick cost me \$8.00 per thousand, and all I get over that is what I have got to figure on what it is going to cost me. If I figure \$14.00 I figure it will cost me \$6.00 a thousand. I built one house up here at Russellville and I got \$20.00 and had everything furnished except the labor and mechanics, and I didn't make anything out of it. It is different from this, of course. I have figured on lots of jobs at \$13.00 and \$14.00 and some other fellow gets them. There is somebody figuring that way. I built Maddox Seminary and got \$15.00.

Q. You say you would estimate your total cost at from \$13.00 to \$14.00 a thousand?

A. Yes, sir. Owing to what kind of work it is. I

would figure about \$14.00 a thousand, because sand will cost me more out there than here.

Q. From \$13.00 to \$14.00 a thousand and your mortar about \$1.00 a thousand?

A. Yes, sir. That leaves \$5.00.

Q. What part of that will hod carriers take up?

A. They get \$1.75 and mortarmen \$2.00 and brick carriers \$2.00 by the day. It takes about a man and a half to a brick layer. You have got to pay brick layers fifty cents an hour. Last year it was forty-five.

Q. How about the price of brick now? Is it lower or higher?

A. The same it was last year, \$8.00.

Q. You said awhile ago \$13.00 and \$14.00 per thousand and actual count. What did you mean?

A. Eighteen brick to the foot. It takes eighteen to lay a foot.

(BY JUDGE HEMINGWAY.)

Q. What is the difference between wall measurement and actual count, if any?

A. Four and one-half bricks to the foot.

Q. Twenty-five per cent difference?

A. Yes, sir. Eighteen will lay a foot. Four courses a little over eleven inches. After the mortar is in there eighteen will lay a foot.

GOV. DANIEL W. JONES, recalled, testified as follows, to-wit:

I notice in the testimony of Mr. J. C. Massey in speaking about the Kline matter these questions and answers appear:

“Q. You say you talked with Governor Jones personally about the matter?

“A. Yes, sir.

“Q. Did he seem to be of the impression that the charges were well founded?

“A. He didn't say. I said, ‘Governor, it seems pretty hard that we put a man in the Penitentiary for stealing a pig and small offenses, and that when a trusted agent of the State has stolen some \$1,500 and more of cotton seed, he goes free,’ and his only remark was that, ‘as it was inside of the family to say no more about it.’”

I state most positively that is not true. There was never any reason for any such a statement. Mr. Massey advised with me in regard to the matter and I gave the best advice I knew. After hearing Mr. Kline's investigation I came to the conclusion that while his conduct was not satisfactory, I believed a criminal charge could not be sustained unless we could get more testimony. It was Mr. Massey's business as Financial Agent to look after those cotton seed and sell them. And it was for the purpose of assisting him in preventing a loss and making himself liable upon his bond in neglect of duty, if there was a neglect. And there was never any occasion for making any such remark as he says, because I had never seen Kline before that time to my knowledge. Only had heard generally that there was a man by that name, a Warden of the Penitentiary, and considered a most excellent Warden. That

is all I knew about him. I would not know him by sight today.

In regard to the purchase of the land upon which the new Penitentiary is located I have this to say: After examining the land I concluded that it was about the best location for the Penitentiary that I had found anywhere or had seen anywhere near the city. One important consideration with me was the nearness to the railroad, because it is a matter of necessity to have a railroad to the Penitentiary, in order to save a great deal of expense in hauling. I thought that the perpetual use of the Dickinson railroad spur was worth the price paid for the land, and I really thought and think yet that we got the land for nothing considering the value to the Penitentiary of the railroad switch. From my information in regard to the value of land around the city generally I thought the price was a very reasonable one even without the railroad. Mr. Dickinson refused for a long time to take less than \$500 an acre for it. And it was after considerable parleying about it before he finally consented to take \$5,000, and the perpetual use of his railroad for the fifteen acres of land. He said that he was moved to do this by the fact that he had a contract for convicts and the location was so close to his brick yard that he recognized that as a benefit to himself, and that he would not sell that land to any one else for anything like the price that we paid for it.

In regard to the contract with Dickinson, and when I say Dickinson I mean the Company of which he is presi-

dent, the facts are these: After the Act of 1899 was passed requiring the Penitentiary Board to build the new Penitentiary and turn over the old one to the new State Capitol Commission, we made a contract with Mr. Dickinson to furnish brick at the price named of \$6.00 and \$8.00 per thousand delivered upon the ground. We thought that we could build that Penitentiary ourselves, and so intended. But finding that we had no brick masons in the Penitentiary except one we concluded that we could not build it with the convicts and afterwards made a contract with Mr. Dickinson, the first contract for the building of the Penitentiary. After the foundation was partly laid we concluded that we would change the plans. And I may say here that it was always my desire to build the Penitentiary after a more modern style than the old one, but the Board didn't agree with me originally and we finally concluded to duplicate the old Penitentiary excepting as to the dimensions of the wall. We had an interview with Mr. Mann, the architect of the State Capitol Commission, and asked him if he would draw us plans for the new walls and new buildings, and finally we agreed with him upon the price for them. We sent for Mr. Dickinson and notified him that we were going to change and told him in what respect. He said if you do you will have to change my contract, because I will not build such a Penitentiary as you now design for the same price as I have contracted to build for. We had quite a controversy about this, Dickinson declaring that he was willing to go on with his

job according to the contract, but that he would not change unless the terms of the contract were changed. I remember very distinctly the last day this matter came up. We were the whole afternoon and until nearly dark talking about it and failed to come to any conclusion, when we just told Mr. Dickinson to go on with the contract as he had made it and duplicate the old Penitentiary. The meeting broke up and in a few moments afterwards Judge Hill, Commissioner of Mines, etc., and a member of the Board, came to my office and said that he had done wrong, and that we ought to make modern buildings. I said to him that he was the one obstacle in the way; that Mr. Hull and I were willing, but that he was not willing, and that if he wished to do that if Mr. Hull and Mr. Dickinson could be brought back there, we would take the matter up again. He went out and brought them back and made the motion himself to accept Dickinson's proposition for a new modern Penitentiary. I neglected to state that Mr. Dickinson had made a proposition to us that he would build the Penitentiary and walls according to new plans provided the measurement was made as wall measurement and not as kiln measurement. The Board fully understood the difference, that the kiln measurement was eighteen brick to the cubic foot and wall measurement twenty-two and one half brick to the cubic foot. We had in the meantime consulted with the architect in regard to this matter and what the difference would be, and Dickinson demonstrated to my satisfaction, and that of the Board, that with this

difference he would be getting no more if as much as he would under the original contract. And therefore the change was made and the last contract entered into. When the Board concluded—that is, before Judge Hill called back Mr. Hull and Mr. Dickinson as I have stated—that we would go on with the old contract, I remember Mr. Dickinson stating, “Gentlemen, I am very much obliged to you, because so far as I am concerned I will make more money under the contract existing than I would to make a new one, but I would like myself to see the State have a more modern Penitentiary than you will have if this goes on.” The Board used a great deal of care and a great deal of time in arriving at a conclusion in this matter. There was only three members of the Board present and rarely ever any more, and those three members were the Secretary of State, Mr. Hull, Judge Hill, Commissioner of Mines, etc., and myself. The Attorney General, Mr. Davis, never attended the Board after the adjournment of the last session of the Legislature. Mr. Sloan was there very seldom because he was out of town a great deal, and the burden of the work was upon the three of us mentioned, and I am sure we gave a great deal of time and a great deal of care and attention, and we never went blindfolded at anything, but arrived at all the information we possibly could before determining anything.

(BY JUDGE HEMINGWAY.)

Q. From what you knew of the prices then being paid

for the erection of brick buildings in this city, did you then regard the contract you made as a good one for the State?

A. I did, and moreover, I believed then and believe now it was a much better one than I could have made for myself personally. I inquired diligently into the price brick is sold here in the city and the price of labor, and occasionally I went to buy some myself. I don't believe that any private person could make as good a contract as the Board made for the State in that matter.

Q. Did you believe then or do you believe now that the State could have made a better contract for the erection of these buildings than the one that was made?

A. I am sure it could not. Positively certain of it.

(BY MR. PATTON.)

Q. Didn't Mr. Massey develop all the facts presented before your Board in regard to the Kline transaction?

A. Yes, sir. I think he did. Except in one particular. Mr. Kline said that there was a great deal of this cotton seed that was rotting out down there at the place and he said it is there to show, which would have perhaps straightened out his account. Mr. Massey never reported and I have never learned yet that he ever did, and I didn't find it in here in the testimony that he ever went there to see how much cotton seed was rotten. If he did he never reported to us. And in fact the whole matter had gone out of my knowledge until I was examined before this Committee on this matter. My objection to Mr. Kline's

conduct was that he disclosed the fact that he was buying cotton seed for himself and other persons and shipping it and mixing it with the State cotton seed, and when I asked him if he thought he was doing right he said he didn't intend to do anything wrong and did not think he had. I know that I and the Board thought that his conduct was very reprehensible in that particular and he had no business to do it.

Q. When you testified here before did you not state that Mr. Kline never did make a satisfactory explanation of the matter to you?

A. Yes, sir. And the work was not satisfactory in that respect.

Q. Did he ever establish or attempt to establish or offer to establish the proof that he had been buying cotton seed?

A. He mentioned the names of persons for whom he had been dealing, but I don't remember who they were.

Q. Did you investigate to find out whether or not that was correct?

A. No. For the simple reason that was the Financial Agent's business. The state officials would not have time to go looking around the country in these matters when he is paid for that matter. I suppose Mr. Massey there would make all the investigation necessary.

Q. Didn't Mr. Kline leave the Board with the assurance that he would prove these things in time?

A. I don't remember that. In fact the whole Kline transaction went out of my mind until my attention was called to it here by this Committee and since I left the Committee I have been thinking about it and talking to Mr. Hull and Judge Hill and Mr. McConnell in regard to it. Mr. McConnell, I notice in his statement, mentions a matter that had entirely slipped my memory, but is very fresh after reading it, and that is that he did not know that the Board had sent for Mr. Kline. I remember after reading that—I have not seen Mr. McConnell since—he seemed to be surprised I didn't tell him. I have never told him the reason he was not notified, but it was because Mr. Massey had asked me specially not to let Mr. McConnell know anything about it. And we didn't let him know. I remember this, too: That the Board concluded that Mr. Kline was not a proper man to be Warden after that investigation. We were not satisfied whether or not he was guilty, but we did not think we could establish guilt upon him without more testimony, while we didn't believe his conduct was right, and so informed Mr. McConnell. I remember Mr. McConnell told me that the camp would be broken up in a short time and that if Kline were dismissed now it would be a very difficult matter to get the proper man to go there, and besides that he had had no settlement with Kline, but when the camp broke up he would bring Kline up here and settle with him. I never heard of Kline being in the service of the Penitentiary after the camp was broken up.

Q. Did Mr. Massey ever assign any reason why he didn't want Mr. McConnell notified?

A. I don't know. I am never anything like a tale bearer. I would not like to repeat exactly, because Mr. Massey was speaking to me rather confidentially. I remember the fact that he didn't want Mr. McConnell to know it, and he may have stated several reasons for it. At that time I don't think there was any very cordial feeling between the two gentlemen and I didn't want to add any fuel to that kind of flame, and consequently I never mentioned it to Mr. McConnell.

Q. Did you not think at the time that Mr. Massey used due diligence in developing these facts?

A. Yes, sir. I thought he did all he could.

Q. You never called his attention to the fact that he find out further about Mr. Kline's affairs and find out whether or not that seed was there?

A. I don't remember mentioning that. It passed out of my mind. I don't think Mr. Massey ever called my attention to it again. He may have gone there; if he did he never notified me, and he doesn't say anything about it in his testimony. I had no cause to complain of Mr. Massey. He seemed to be perfectly diligent when it came to his notice.

Q. You didn't think that the facts before you would be sufficient to sustain a criminal charge?

A. No, sir. I didn't think they would.

Q. With regard to this brick contract, you say that

you made some inquiry or had some experience as to the price of brick? Did you ever advertise for competitive bids?

A. Not required to do it by law, and never was done. The fact is, under the present system it would be very hard to run the Penitentiary that way. It never was done.

Q. It is true there is no requirement by statute, but as a business proposition did you not think that it would have been expedient in a contract of this magnitude?

A. No, sir. For the simple reason that I knew all the contractors that generally asked for that kind of work and none of them were doing it as low as this proposition of Dickinson. I had an addition to my house built of brick, a few years ago, I believe about the time or just before I went into the office of Governor. I took bids for it from contractors in the City and I know I took the lowest bidder and I paid him more in proportion to the work done there and that man lost money on the contract. Lost about \$200.

Q. Could it not have been demonstrated more clearly that this Brick Company would furnish material cheaper if you had submitted the proposition to competitive bids?

A. No, sir. Could not have gotten it cheaper.

Q. Could not the fact have been more clearly established?

A. To my satisfaction or the satisfaction of the Board?

Q. Yes.

A. No, sir.

Q. You spoke of making arrangements with Mr. Mann to draw up plans and specifications for the new Penitentiary buildings and walls?

A. Yes.

Q. Did the Board ever enter into a written contract with him that you remember of?

A. I could not tell you how it was. I know there was a contract with him. I expect it was. If not it was on the minutes of the Board. It ought to be.

Q. You say a written contract should have been entered into or a record kept one?

A. Yes, sir. There should have been some memoranda upon the records of the Board, and if there is no such a record or memoranda of such a contract it was evidently an oversight. I know there was a perfect understanding with Mann about the contract.

(BY SENATOR BUCKNER.)

Q. You said a moment ago that Mr. Davis, who was at that time Attorney General, did not attend any of the meetings of the Board after the adjournment of the last session of the Legislature?

A. That is a fact,

Q. Do you know why he did not?

A. I never have had a word with Mr. Davis except when we met upon other Boards from that day to this. Our communications have always been purely official. There was no reason so far as I know that he should not have met with the Board if he had wanted to.

Q. Was it not generally understood that it was his duty as Attorney General of the State of Arkansas to advise as to all contracts entered into?

A. When I was Attorney General I drew up all the contracts made for works in the Penitentiary. And then it was under the lease system and there was less reason for doing it than there is now. And when Mr. Kinsworthy was Attorney General during my first term as Governor he drew up all the contracts that the Board made. Mr. Davis never drew up any that I ever heard of, at least after the adjournment of the last session of the Legislature.

March 26th, 1901.

S. P. TURNER, recalled, testified as follows, to-wit:

Q. Mr. Turner, I will submit this testimony to you for your inspection, and if you have any corrections to make, then you will be at liberty to do so?

A. It was something like this, to be a saving to the State of twenty-five cents a ton, and that we would divide the twenty-five cents. Now, my recollection of the conversation that occurred between me and Mr. McConnell was that the proposition he made me was a saving to the State over all other propositions that I had had and could get or had been able to get up to that time, of probably twenty-five cents a ton or more. I am not perfectly clear on that as to that amount. Then the additional conversation or proposition was a division between him and I of the twenty-five cents per ton. The proposition was not submitted to me in writing. It only occurred in a verbal conversation between he and I on the street, as I recollect near Markham and Center. I don't remember just how he

told me or if he told me how he would be able to obtain the twenty-five cents per ton that we could divide. I don't remember about that. As to whether it was in the way of rebate on freight rates or commission or not I don't remember about that. I don't know that there is anything further that I wish to add to this."

(BY SENATOR BUCKNER.)

Q. At the time that proposition was talked over between you and Mr. McConnell, did you consider what he said to you a business transaction, or did you consider it an improper proposal to divide profits on the deal?

A. My view of it at that time was that it was an intention on Mr. McConnell's part to save the State money, because I know that he went to the trouble of getting up the data, at least he told me, and the proposition as I understood it on his part was to furnish the institutions coal for less money than I could get it elsewhere.

Q. Then you didn't consider it improper at the time, a dishonest one?

A. No, sir. I didn't think anything serious of it at all. Of course you understand when the proposition was made he and I were just simply talking in a casual way. There was no written proposition, and of course his proposition to me at so much a ton to the State would have been carried out to the letter had I contracted with him. Any other proposition it would have been a matter between he and I whether it was carried out. I don't remember what the price was—that is, I mean in dollars and cents per ton. I do remember that it was a cheaper proposition.

I don't remember just what mine he represented. As I understood it was not the property of the State. It was some mining concern up on the railroad. I don't remember the name of the concern.

(BY MR. M'CONNELL.)

Q. Mr. Turner, I just want to refresh your memory. Do you recollect my showing you a letter and quotations I had in a little book giving the price loaded on the mines at Spadra and my telling what the freight rate was and we discussed this rate, what it would cost to deliver it?

A. I don't remember any letter that you showed me. I remember that you had possibly a memoranda or some figures on a book that you showed me about what it would cost to lay the coal down here.

Q. You didn't understand I was selling my own coal?

A. No, sir. As I understood you were selling that for some men out there. I don't remember the names.

Q. Kemp & Son?

A. Yes, sir. That is the name.

Q. Do you recollect that we discussed—I want to call your attention to the fact that I gave you the price at the mine \$1.60 per ton and \$1.15 per ton was the freight, making \$2.75, and then we discussed the cost of delivering it and then the question came up as to whether it could not be delivered cheaper with State teams?

A. My recollection was that the pencil memoranda or the day book memoranda that you showed me had all those figures in it.

E. T. McCONNELL, being recalled, testified as follows, to-wit:

In 1897 there was a strike at the Stiewell coal mines at Spadra and an old gentleman and his two sons and son-in-law were working in the mines—A. Kemp and sons—and they went out and took a lease on a piece of land immediately adjoining these mines up there. They were all practical miners. They had nothing. They would work on the farm and get enough to sink a shaft. I met him up there. He was a poor friend of mine. He says, “Me and my boys know how to dig coal but don’t know how to sell it. You are down at Little Rock, I wish you would sell it.” I told him I had no time for anything of that sort. He says, “If you see anybody that wants any coal let me know and I will come down.” I learned about this coal for the State. We were not using any coal at the Penitentiary, we used wood. I suppose we bought about two tons a year. I was up home and told his son-in-law “Your father ought to try to get the contract to furnish the State Charitable Institutions.” I heard nothing from him for a time and never thought anything about it until I got this letter. It says:

Spadra, Arkansas, April 18th, 1897.

Mr. E. T. McConnell, Little Rock, Ark.

Dear Sir:—I have been wanting to see you for some time but have not chanced to meet you in Clarksville so I concluded to write. What I wanted to see you about was the getting of the contract for the State Institutions for what coal they consumed from this place. Stimel & Lloyd had the contract last winter. Now if you will find out the amount of coal they use and what they paid for all the different sizes and let me know before they contract, I will pay you well for your trouble. We are breaking and stacking all our coal and will be able to fill orders for all sizes promptly. Our coal, I think, is a little better and freer from slate and sulphur than Stimel's. I think we can undersell them as we are not to the expense they are.

Yours respectfully,

ALBERT KEMP.

They dug all their coal, and after I got that letter—I had forgotten all about speaking to him about it—I met Mr. Turner over here on the corner and asked him if he had bought the coal. He said, "No, they had several bids in," and I showed him this letter. He has forgotten that. He read that letter. He said "Who are these parties, are they responsible and can they fill the orders?" I told him that I would guarantee that they were. I went on and explained that they were poor men that dug the coal themselves and made their crop when they were not digging, and that the only expense they were at was their actual living expenses. I had forgotten the price that he gave me, but I do recollect since this thing came up that they proposed to let the coal at Spadra for \$1.60, and I went

and ascertained from Mr. Bragg that the freight was \$1.15, which made \$2.75 delivered here. He said \$3.40 was the price paid, which left sixty-five cents to deliver it at the different institutions per ton. He said he did not know about it, that he had never bought any that way. He had always bought it delivered, that he did not know what it would cost him to deliver it. The question then came up, I don't know which suggested it, about the Penitentiary teams. I said of course they could haul it but they would have to charge for it just like other people. While it is for the State the Penitentiary has to support itself. We discussed as to what they could deliver it at and the points to be delivered from. The coal to go to the Deaf Mute would be shipped at the Union Depot. The Blind School to be switched down here on this side track. All these things we discussed. And I said "Now all that Kemp wants out of it is \$1.50 loaded on the cars." He figured on it awhile and said, "Well that is cheaper than we are going to get it, I will study about it." In that conversation I told him I didn't know whether it would be advisable to haul it with the Penitentiary teams from the fact there was an ordinance here in Little Rock prohibiting them working on the streets of the city. He laughed and said this will be working for the State, State Institutions. We had quite a little talk. I said "study about it." Two or three days afterwards I met him and called him off to one side and he said "I talked to Dr. Hooper about that Spadra coal and he said 'be damned if he had it at all.'"

He said, "I guess the trade is off." I wrote to old man Kemp to that effect. I didn't have a cent's interest in it, only trying to help that old man and his boys. This is about all I know about it. Never thought of it since. If the trade had been made, I was making it for Mr. Kemp. and the State would have been saved twenty-five cents a ton besides a margin, as he said, to somebody else. I didn't consider that acting as agent for a friend was any violation of the law and don't yet. In the meantime some fellows came from Kansas City and got all his coal and the old man is worth \$10,000 to-day.

(BY MR. PATTON.)

Q. That was all the conversation you had with Mr. Turner?

A. That is all I recollect. I don't think I had but two conversations with him about it—one when I showed him the prices in the letter, the other when I met him and he said Dr. Hooper told him he would not have the coal under any consideration. They paid \$3.40 for coal they could have delivered for \$3.15, and that would have allowed forty cents a ton for hauling it, which would have been a big price. At least he said he paid \$3.40. I don't know what he paid. He spoke of two or three bids he had in. I don't think Mr. Turner intended to do anything except look after the interest of the State and I was looking after the interest of my friends and at the same time looking after the interests of the State.

(BY SENATOR BUCKNER.)

Q. I will just ask you this question: If you had in your mind at any time a secret division, in your conversation with Mr. Turner, a secret division of twenty-five cents or any other sum of money between you that would not appear in these accounts?

A. There was something said about saving the State twenty-five cents a ton and anything else might be divided. I think may be I made this remark to him: "You can save the State twenty-five cents, and anything on the side you can have yourself or split it." The old man was giving me these prices to act as his agent. My recollection was that the State could have been saved twenty-five cents and still get coal twenty-five cents on the ton cheaper and still have been a little margin, which I would have been entitled to if he had given me the bid at twenty-five cents a ton less than others. Acting as Mr. Kemp's agent I would have been entitled to whatever the difference was.

(BY MR. PATTON.)

Q. Why didn't you state that awhile ago?

A. I don't know. I never thought of it.

Q. You knew that he had testified to that in substance?

A. Yes, sir. Of course I knew it was in his testimony. If I had thought of it in making my statement I would have mentioned it. I have nothing at all to cover up about it. What I done was an outside matter that the

Penitentiary had nothing whatever to do with. Like I buy a piece of land and sell it to somebody else, or a horse.

Q You did discuss the advisability of hauling it with convict teams?

A. That was mentioned. That was discussed but before he left in the first conversation I gave him to understand that that would not be advisable. If it had been delivered with convict teams the convict teams would have been paid for hauling it. We kept a number of teams out there and sometimes some of them are idle.

Q. In your testimony the other day you stated that Judge Hill had a servant who was a convict at his home in Washington County?

A. We hired a convict to Judge Hill, first a man he had as a sort of janitor at his office. He took a negro boy up to his home with him about two months before he was pardoned.

Q. Did he ever pay the State for the services of the boy?

A. I suppose so. I could not say. The janitor was paid \$8.00.

Q. It is your impression that he did?

A. Yes, sir.

Q. And you would have to refer to the books to tell?

A. Yes, sir.

Q. Do you know how long this convict stayed at Judge Hill's home?

A. No, sir. I could not tell you. I see something about Will Reeves. Will Reeves brought a negro up from his camp. The State got fifty cents a day for him every day. And the one that worked at Dickinson's belonged to his brick yard. It also speaks of an old long-time negro. That was a negro that the State took charge of in 1893 and that old negro was a servant at Mrs. Miller's. Mr. Worthen left him there during the eight months he was Warden, and when I came in there was a contract signed by and approved by the Board with Mrs. Miller for the hire of that negro, Gilbert.

Tuesday Night, March 26th, 1901.

GOVERNOR JAMES P. CLARKE, having been duly sworn testified as follows, to-wit:

Q. You live in Little Rock?

A. Yes, sir.

Q. You were Attorney General of Arkansas from 1893 to 1895?

A. Yes, sir.

Q. And Governor from 1895 to 1897?

A. Yes, sir.

Q. From 1893 to 1895 Governor Fishback was the Governor of the State?

A. Yes, sir.

Q. The Act of the Legislature creating a Board of Penitentiary Commissioners was passed in 1893? You

were a member of the Board both as Attorney General and as Governor?

A. Yes, sir.

Q. From the time that you became a member of the Board down to the time that you went out of the office of Governor were the contracts that the act of the Legislature authorized the Board to make made upon advertising for bids, or were they made by private negotiation?

A. Just before we got possession of the convicts in 1893 (May) we published advertisements probably in one or two of the papers here and in one of the papers in Memphis that we desired to dispose of them under the terms of that Act, and probably on one occasion after that. But we discovered that it was not only unnecessary but in most cases impracticable to proceed by advertisement. There was always more applications for contracts from persons who desired to use the convicts in farming operations than we had convicts to let. And the choice resolved itself largely into the proximity of the city to the capital, the transportation facilities and a great many other questions of that kind. Then whenever we could hear where there was any opportunity to use any convicts we generally caused some member of the Board to take that matter up and by private negotiation make the arrangements, so the habit grew of disposing of them without advertising because of the kind of people we had to deal with rendered it of no special value to the institution nor to the State.

Q. Was it understood that the Act made it the duty of the Board to advertise?

A. I didn't understand that it was mandatory. If a contract would expire at the end of the year we would discuss and consider whether it was worth while to renew that contract or to accept a similar offer from somebody else, and frequently we had more applications than we could possibly dispose of. And the matter just resolved itself largely into considerations other than that of price.

Q. Besides the contracts for the labor of convicts in making other contracts for materials, for purchase of supplies, for buildings, or for any other purpose of that sort, were contracts made upon public letting or other private negotiations?

A. We never leased any places while I was on the Board except upon what is known as the share crop system. As for building, we didn't do any building except stockades. For the purchase of current supplies I can't say we never advertised for that. I don't recollect any instance where it occurred. We generally caused the Financial Agent to go around among the different dealers and indicate that we would care to consider bids from them. For instance in clothing or shoes, meats and various other things that we used, we sent around among the dealers and notified them to come to us, where we could make the most advantageous trades. They were always submitted to the Board.

Q. The Board didn't invite bids?

A. I don't remember a single instance where we did. It was not regarded as the best way of getting at the most advantageous contracts.

Q. That system continued for four years?

A. As well as my recollection serves me that is true.

Q. And that was the result?

A. Practically the workings of the law. We discovered that some elasticity had to be employed to incite competition.

Q. There is nothing in the Act which requires any advertising. I just wanted to know what the custom was before the present administration went in. Whether or not the present administration in letting contracts without advertising followed the precedent of the two administrations preceding it?

A. I don't know what this last administration did in that line. I am somewhat familiar with what they did the four years preceding the commencement of the Jones' administration.

Q. The last administration didn't let contracts?

A. In that respect I can say that they had conformed to the practice that was employed preceding that. It is but proper to say that I remember at least two occasions when we published advertisements in the papers saying we would consider propositions from persons who wanted to make contracts for convict labor.

Q. But the results of those advertisements was to satisfy you that that was not the best way?

A. After advertising that we would on a certain day take a matter up there was some kind of an obligation to take it up at that time, whereas if we took it along it gave us a better opportunity for negotiating.

(BY MR. PATTON.)

Q. Conceding that the law does not require you to advertise for bids, the question simply resolves itself into one of advisability?

A. Yes, sir. Every occasion stood upon its own necessities. In the current administration of affairs we could tell what would be likely to bring about the best results. For instance, I remember on one occasion when we bought the striped material out of which the clothing for the convicts was made, we got quite an active competition between dealers. And we deferred letting the contract several days until they could communicate with their mills, and finally got it very much cheaper than it was offered on the first day. That is a matter that you have got to determine from occasion to occasion. If you find that competitors are pooling on you or that there is no occasion for pursuing a course independent of them, you might have to go to the extent of going to the markets outside of the city, as we did on one occasion, for shoes.

Q. In the matter of purchasing material in large quantities, building material, under all the circumstances, would you deem it advisable to advertise for competitive bids?

A. We never bought any considerable quantity of

material. That would be the mere expression of an opinion. I have no objection of giving my opinion.

Q. Inasmuch as this is all a matter of opinion we would like to have your opinion.

A. I would try both ways. I would advertise for bids and reserve the right to reject any that did not suit me, and if I found that by private negotiations I could get better terms I would do that. I would not be bound to pursue any one course. I would find out what a fair price was and then adopt both sides.

Q. By submitting to competitive bids could you not ascertain reasonably well what a fair or market price of material was?

A. A fair or market price can be ascertained outside of letting. You have got to know something about that to know whether or not any bids are reasonable. I would either know myself or have around me somebody that did know the fair price of the articles that I wanted. And if I found it the better plan to advertise for bids I would do that. In a matter involving any considerable outlay I would certainly advertise for bids, but reserving the right to reject any. I believe we usually did that. I think that is what you would call the customary way by which the larger contracts might be disposed of. The whole purpose in advertising for bids is to excite competition among dealers.

(BY JUDGE HEMINGWAY.)

Q. If you were informed as to the price, as for instance brick, and an offer was made which you believed was cheaper than anybody else would make, would you deem it necessary to advertise for bids?

A. If I was satisfied that it was cheaper than anybody else would offer, there would be no occasion, but I would have to be satisfied that that was true.

Q. In the matter of contracts that the law requires to be made by public letting, has it not been the experience that there has been a great deal of combination and that the prices are often very high?

A. It is said to be a fact that competitors do combine and that is one of the things to be looked into.

Q. So that at last the Board which has the letting of contracts ought to be informed and ought to rely upon its own judgment in public letting or otherwise?

A. Yes, sir. They ought to be satisfied independently of the bids that they are getting the commodities they want at a fair market price. By that I mean the price that other people well informed have to pay for those things for private use.

(BY MR. PATTON.)

Q. In an instance where you were to let a contract of any proportion for building, you were familiar with the price of brick, but were not familiar with the recognized or established rules of measurement of walls, and were not familiar with the prices of skilled laborers, and were not

familiar with the prices of common labor, and were not familiar with the price of other building material, would you not deem it advisable to submit the matter to competitive bidding?

A. If the contract was one of any magnitude, even if I should have definite ideas of what it ought to cost, I would verify that by inviting bids, reserving the right to reject any in excess of what was reasonably and fairly the value. Unless under exceptional circumstances where it was perfectly plain nothing could be accomplished by advertising, and it affirmatively appeared it was no use to be investigated further by reason of some contractor, the condition of some contractor that proposed to take the contract, and nothing to be accomplished beneficial, I can conceive of a case where I would not want to make any further inquiry. But if it were a matter such as you indicate I would be inclined to invite bids if no other reason than to confirm my impression that the private offer was a fair one.

Q. If builders can combine or pool in bids could they not do so on the outside?

A. It is one thing to combine on a bid and it is another to deprive an intelligent man of the right to inform himself about what the price ought to be. Now, there is a case recorded in our Supreme Court where a number of bidders combined on our public printing and the maximum rate was charged, and the court seized on a technicality to get rid of it.

PATRICK POWERS, having been sworn. testified as follows, to-wit:

Q. What is your residence?

A. Little Rock.

Q. What is your business?

A. Contractor.

Q. How long have you been a contractor?

A. About twenty-one or twenty-two years.

Q. Contractor for brick work?

A. Yes, sir.

Q. Have you had experience in building large brick houses?

A. Yes, sir. Just finished the Blass building up here in the City of Little Rock.

Q. What is the size of that building?

A. Fifty by one hundred and forty.

Q. What is the height?

A. Five stories and a basement.

Q. Estimating it by the thousand brick what did you get for building that Blass building.

A. I estimated the superstructure, I think at \$13.50 per thousand. That is eighteen brick to the foot.

Q. That is what is called kiln measure?

A. Yes, sir.

Q. You made your bid on that basis?

A. That is for the superstructure. I think I figured \$17.00 on the other.

Q. Have you seen the new Penitentiary?

A. No, sir. I have seen the walls, the outer wall.

Q. Have you seen the buildings?

A. No, sir.

Q. Have you seen the blue prints of the buildings?

A. I have seen one.

Q. What blue print did you see? Of what building?

A. I didn't read it that I know of. I don't recollect what building it was. I just looked at the elevation. I didn't pay any attention to what building it was.

Q. On the supposition that the other buildings were of the character of that one—they have been described by witnesses as not plain walls but fancy walls with a great deal of difficult work—what would you say was a fair price for a building of that kind? Estimate it by the thousand, the walls and buildings?

A. The building I saw I should judge about \$12.50—that is, wall measurement. But of course all buildings are not alike. Some buildings have heavy walls.

Q. Suppose that the contract for building the walls and buildings there were \$8.50 wall measurement and \$10.50 for four inch facings where pressed brick of reasonably uniform color are used, the builder to furnish the mortar and the hod carriers, would you say that that was a reasonable contract or not?

A. Yes, sir. I could not have done it for that. I would not face that wall with pressed brick—that is, do it in press brick shape. We generally get \$15.00 to \$20.00 for pressed brick. I take it that is not the regular press

brick work. That is worth at least a couple of dollars more to lay.

Q. The brick cost more do they not?

A. I should judge that in those buildings that a man could get brick enough to face the wall. The laborers will divide them on the ground. With a little care they can be selected.

Q. You are familiar with the terms of the contract of the Arkansas Brick & Manufacturing Company for doing that work?

A. I am not sure. I have heard two or three different stories.

Q. Assuming the statement I made just now to be true, do you believe that any one else could have been gotten to do the work cheaper or as cheap?

A. No, sir. I do not believe there is a man in the State could.

Q. Do you believe that if the work was stopped today the State could get anybody to take the work up and complete it at the price named in the contract?

A. No, sir. I don't believe they could.

Q. What amount of cement does it take to a thousand and brick, the average amount?

A. Depends on the specifications. Sometimes they specify one barrel of cement to two or three of lime.

Q. What would be the cost of the mortar per thousand and of brick?

A. For ordinary mortar, \$1.00 a thousand.

Q. How much would a hod carrier get per thousand of brick?

A. A hod carrier ought to carry two thousand five hundred brick a day.

Q. How much do you pay him?

A. One dollar and fifty cents a day of nine hours.

Q. Then the pay of a hod carrier for carrying brick would be something like seventy cents?

A. Yes, sir.

Q. Would \$1.75 cover the cost of the mortar and the services?

A. I would calculate about a laborer and a half to a mason. That would be about \$2.25 or \$2.50.

Q. I am trying to get down to what it is by the thousand of brick?

A. The best of men get left on that. I never went into it that close to see just what it did cost.

Q. You say that one hod carrier carries two thousand five hundred brick a day and you pay him \$1.50 a day?

A. Yes, sir.

Q. A mortarman will serve how many brick layers?

A. From three to four; depends on the thickness of the wall.

Q. What do you pay the mortarmen?

A. About the same as the others.

Q. If a brick layer will lay one thousand five hundred brick a mortarman would carry six thousand brick?

A. Yes, sir.

Q. So if you pay him \$1.50 a day and he serves six thousand brick his pay amounts to twenty-five or thirty cents a thousand?

A. About that.

Q. And the hod carriers seventy cents, that would make about ninety-five cents, and the mortar \$1.00, so that the cost would be a little less than \$2?

A. About thirty cents a thousand for the brick carrier. That is common labor.

Q. You are wanting to get brick work, build brick houses? Would you have been willing to undertake the contract out there at the price at which it was taken by the Arkansas Brick & Manufacturing Company?

A. No, sir. I could not do it. Because I would have to buy my brick from somebody else.

(BY MR. PATTON.)

Q. How many brick layers did you say that a hod carrier could supply ordinarily?

A. It takes about a laborer and a half to attend one brick layer.

Q. Did you not state awhile ago that a hod carrier gets fifty cents a thousand for brick?

A. That is including the mortarman. I said about thirty cents a thousand for brick carriers.

Q. If it amounts to about thirty cents a thousand for a brick carrier and you pay him \$1.50 per day he will carry them about five thousand brick?

A. No, sir.

Q. How many thousand will he carry?

A. He would not carry but twenty-five hundred. I made a mistake, it will cost about sixty cents.

Q. It takes a man and a half to supply a brick layer?

A. Yes, sir. Including the mortar—that is, on common ordinary work.

Q. Then a brick layer will lay about three thousand seven hundred and fifty brick a day at that calculation?

A. He won't lay that.

Q. If one man carries two thousand five hundred and it takes a man and a half, a man and a half will carry three thousand seven hundred and fifty brick?

A. I say a common laborer ought to carry two thousand and five hundred brick a day. It depends on the buildings and kind of work. He may not carry two thousand. Some times not over fifteen hundred.

Q. Ought not a good brick layer to occupy a brick carrier and a half?

A. Yes, sir. With the mortar. That is a hard matter to get at.

Y. You say you are a contractor?

A. Yes, sir.

Q. It requires the investment of quite a good deal of capital to put up a large building?

A. No. Sometimes it does and sometimes it does not. Depends on the man's standing. He can get along on very little money if he is well known.

Q. Then if you have credit it does not require so much money?

A. No, sir.

Q. Where do you usually get this credit?

A. From the brick manufacturer where I get my brick.

Q. You say you have just built the Blass building?

A. Yes, sir.

Q. What was the cost of that building?

A. Thirty-five thousand nine hundred and ninety dollars.

Q. Who did you buy your brick from?

A. The Arkansas Brick & Manufacturing Company.

(BY JUDGE HEMINGWAY.)

Q. You have stated that a brick layer could lay on an ordinary wall about two thousand five hundred brick a day?

A. Yes, sir.

Q. Could he lay that amount of brick in that building on that blue print you saw?

A. No, sir. I doubt whether he would average from top to bottom one thousand one hundred. I doubt whether he would average one thousand.

Q. Where a brick layer is working on difficult work like that is it easier or harder for the hod carrier to serve him?

A. It is easier.

Q. Then the man who furnishes the hod carrier in difficult work like that has less to furnish than where the work is less difficult?

A. Yes, sir.

Q. While the expense of the contractor who furnishes the brick layer increases with the difficult work, the expense of the man who furnishes the hod carrier diminishes?

A. Yes, sir.

Q. Mr. Patton has asked you if you bought your brick from Dickinson, or the Arkansas Brick & Manufacturing Company. Do they sell most of the brick used in this market?

A. It is between them and Leiper.

Q. Did you get your brick at any reduced price or any consideration that leaves you under obligations to the Arkansas Brick & Manufacturing Company at all?

A. No, sir. I paid them \$8.00 a thousand for machine made brick and \$7.00 for the other. I did get a cut of twenty-five cents because they didn't have the machine brick.

Q. Are you under any obligations to them or in any way interested in their affairs?

A. No, sir.

(BY MR. PATTON.)

Q. You say a bricklayer can't lay as many brick on a difficult piece of work as he can in other walls? What

kind of a wall can he lay the greatest quantity of brick in, a heavy wall or a light wall?

A. A heavy wall. In the middle.

Q. What would you call a heavy wall?

A. Eighteen inches a pretty fair wall. A heavy wall would be about twenty-two inches.

Q. A four foot wall would be considered a heavy wall?

A. Yes, sir.

Q. Do you ordinarily do work on a heavier wall than that?

A. I never had one yet. We have had footings five feet.

Q. If a bricklayer could lay two thousand five hundred brick on any kind of a wall would it not be possible for him to lay it in a four foot wall?

A. A man ought to lay three thousand on a four foot wall right along.

(BY JUDGE HEMINGWAY.)

Q. But you say that a building of the character indicated on that blue print, a man would do well to lay eleven hundred a day?

A. Yes, sir.

March 29th, 1901.

GOVERNOR JEFFERSON DAVIS, being sworn, testified as follows, to-wit:

Q. Your name is Jefferson Davis and you are Governor of Arkansas?

A. Yes, sir.

Q. Were you not also Attorney General and ex-officio member of the Board of Penitentiary Commissioners during the last two years?

A. Yes, sir.

Q. Have you seen the testimony of Governor Jones in which he states that you have not attended the meetings of the Penitentiary Board since the last Legislature was in session?

A. Yes, sir. I saw the stenographic notes of it.

Q. Is that a fact or not?

A. Really I could not say how many meetings I attended. I would have to consult the records about that. I didn't attend very many of them for this reason: Governor Jones and myself were at a bad understanding, and in fact we had no communication with each other for some time just after the Legislature adjourned. I don't know just when it occurred. And the Penitentiary Board meetings were held in his private office and I often insisted on Mr. Sloan, the President of the Board, holding the meetings at some other place. Told him I would come at any time they held the meetings some other place, but during the strained relations between Governor Jones and myself I didn't feel I would be entirely in my proper sphere to go into his office to hold a meeting. For that reason I didn't attend the meetings. Just when I quit attending the meetings I don't remember. I would have to consult the records to see about that. But I have often tried

to get Mr. Sloan to hold them at some other place so that I could feel perfectly free and easy. I didn't feel I could express myself as freely in Governor Jones' office as I could some other place.

Q. What do you know about the contract with the Arkansas Brick & Manufacturing Company for the hire of 300 convicts for ten years? Did you ever as a member of the Board approve that contract, or were you familiar with it when it was executed?

A. I don't remember the details of that. I think the original contract was what is called the Chair Factory contract. That contract was made by the Board while I think I was present and signed that. Afterwards, I have since learned, there was some additions made to that contract, some amendments—that is, that the Brick Company became the assignee of ~~this~~ contract in some way. I was not present when these amendments to this contract were made and did not sign the original. In fact I didn't know anything about the terms or conditions of the Brick Company contract at all until my attention was called to it since I became Governor. Mr. John Dickinson brought me a duplicate of a contract one day, and said that he had made a contract with the Board and had the signatures of four members of the Board to it. It was during the rush of the campaign and he asked me to sign it or to sign the duplicate which he had, and my recollection is that I didn't sign it myself, but told my secretary, Mr. Jacobson, to sign it. If Mr. Jacobson signed it he did it at my request.

I did it without examining the contract, without knowing really its terms or extent. Seeing that four members of the Board had signed it I naturally thought that it was all right. But I didn't sign the original. What I mean by the original is the one that is on file with the Secretary of State. I think that is a bad contract, and I think it ought to be set aside.

Q. Had you known the nature of this contract would you have signed it?

A. No, sir. I would not. This contract was signed by me as a piece of carelessness on my part in not examining it. I ought to have examined it and ought to have known exactly what it was, and I am willing so assume my part of the responsibility for not doing that.

4/10
1-27-78







